

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

PROPEL CHARTER SCHOOLS,	:	
Appellant	:	Docket No. CAB 2018-06
	:	
v.	:	
	:	Appeal from June 20, 2018 Notice
PENNSYLVANIA DEPARTMENT	:	of Denial of Application for
Of EDUCATION,	:	Multiple Charter School
Appellee	:	Organization

OPINION

BACKGROUND and PROCEDURAL HISTORY

This matter comes before the Pennsylvania State Charter School Appeal Board (hereinafter “CAB”) pursuant to the Charter School Law, Act of June 19, 1997, P.L. 225, No. 22, as amended, 24 P.S. § 17-1701-A et. seq. (“CSL”) on appeal by Propel Charter Schools (“Propel”) from the June 20, 2018 notice that the Pennsylvania Department of Education had denied its May 7, 2018 Multiple Charter School Organization (“MCSO”) Application (“Application”) wherein Propel sought to consolidate eight of its pre-existing charter schools as a single MCSO pursuant to Section 1729.1-A of the CSL, 24 P.S. § 17-1729.1-A.¹ On July 18, 2018, Propel filed the appeal that is the subject of this Opinion, and the Pennsylvania Department of Education (“Department”) filed the Certified Record on August 2, 2018. On August 29, 2018, Sandra Stoner, Esquire, was appointed as the Hearing Officer for the case. She held a prehearing telephone conference with the parties on January 7, 2019, when she also issued an Order setting a schedule for briefing on the merits.

¹ Section 1729.1-A of the CSL was added by Section 10 of the Act of November 6, 2017, P.L. 1142, to permit the merger of existing charter schools into an MCSO.

On January 29, 2019, the Department filed a Motion to Supplement the Record with the School Performance Profile (“SPP”)² scores issued by the Department for the 2017 - 18 school year. The purpose of the Motion was to provide CAB with evidence that Propel Charter School - McKeesport (“Propel - McKeesport”) – the only school among the eight applicant schools with an SPP score in the top quartile of charter schools in the Commonwealth – no longer was ranked in the top quartile as it had been for the 2015 – 16 and 2016 – 17 school years. On the grounds that Propel-McKeesport’s fall from the top quartile left none of the eight schools in the proposed MCSO with an SPP score that would qualify Propel for MCSO eligibility, the Department also filed a Motion for Summary Judgment and Memorandum of Law in Support thereof, along with its Motion to Supplement the Record. On February 5, 2019, Propel filed a Motion to Strike the Motion for Summary Judgment and a Brief in Opposition to the Motion to Supplement. On February 11, 2019, the Department filed a Reply Brief in Support of its Motion to Supplement the Record.

On February 14, 2019, the Secretary of the Department of Education appointed John D. Kelly, Esquire, to take over the Hearing Officer’s role due to Hearing Officer Stoner’s appointment to a new position. Due to this transition, by Order dated March 7, 2019, the briefing schedule on the merits of the appeal was stayed pending a ruling on the Department’s Motion to Supplement the Record. On March 19, 2019, Hearing Officer Kelly issued a Memorandum Order granting the Motion to Supplement.

² The SPP provides a school-level academic score for public schools, charter and cyber charter schools, and full-time comprehensive career and technical centers. The SPP scoring system is part of The Educator Effectiveness System (Act 82 of 2012) designed to evaluate both principals and teachers through classroom observations, teacher specific data, elective data, and building level data. In 2018, as a result of the U.S. Department of Education's approval of Pennsylvania's Every Student Succeeds Act, the SPP was changed to the “Act 82 Building Level Score.” See, <https://www.education.pa.gov/Teachers%20-%20Administrators/Educator%20Effectiveness/SPP/Pages/default.aspx> (last visited April 16, 2020).

On March 20, 2019, the Department filed a Renewed Motion for Summary Judgment and Renewed Memorandum of Law in Support thereof. On March 27, 2019, another Order was issued to stay the briefing schedule in light of the Renewed Motion for Summary Judgment. On April 1, 2019, Propel filed a direct appeal to CAB from the Hearing Officer's March 19, 2019 Memorandum Order allowing the record to be supplemented. On April 4, 2019, an Order was entered to vacate the March 27, 2019 Order staying the briefing schedule. After certain other motions were filed by Propel, an Order was entered on April 12, 2019 extending the briefing schedule and notifying the parties that all outstanding issues, including those involving the Motion to Supplement, should be addressed in their respective Briefs on the Merits of the Appeal.

On April 22, 2019, the Department filed its Proposed Findings of Fact, Conclusions of Law and Brief on the Merits. On April 23, 2019, Propel filed a Renewed Motion to Strike the Department's Renewed Motion for Summary Judgment. However, this Renewed Motion to Strike was later withdrawn. On May 2, 2019, Propel filed its Reply Brief on the Merits of the Appeal. On May 7, 2019, the Department filed a limited Reply to Propel's Reply Brief in order to address Propel's position on the Motion to Supplement the Record.

On May 21, 2019 both Propel's direct appeal to CAB of the Hearing Officer's March 19, 2019 Memorandum Order granting the Department's Motion to Supplement the Record and its appeal of the Department's decision to deny Propel's Application to establish an MCSO were argued before CAB.

On June 18, 2019, CAB voted 4 to 0 to deny Propel's appeal from the Hearing Officer's Memorandum Order allowing the record to be supplemented. Also, on June 18, 2019, CAB voted 3 to 1 to deny Propel's appeal of the Department's decision to deny Propel's Application

to establish an MCSO; however, CAB tabled the matter as a nonactionable vote because CAB determined, in accordance with its interpretation of the CSL, that the 3 to 1 vote did not constitute a valid action by CAB.

CAB consists of the Secretary of Education and six (6) members who are appointed by the Governor and with the consent of a majority of all the Senate members. Section 17-1721-A(a) of the CSL, 24 P.S. § 17-1721-A(a). Presently there are only six (6) total members of the CAB, including the Secretary of Education, because one of the positions on CAB is vacant. The CSL defines a quorum as “[a] majority of the members of [CAB]”; thus, four (4) members constitute a quorum. *See* 24 P.S. § 17-1721-A(b),

At CAB’s June 18, 2019 meeting, Member Lee Ann Munger (“CAB Member Munger”) recused herself from the vote because her children attend Propel. Additionally, the Department’s Secretary recused himself from the vote, as required by the CSL,³ leaving four (4) CAB members which was sufficient to constitute a quorum. CAB voted 3 to 1 to deny Propel’s substantive appeal from the Department’s denial of Propel’s Application. CAB, however, tabled the matter for revote until its next meeting in July on the grounds that CAB’s 3 to 1 vote to deny Propel’s appeal constituted a nonactionable vote based on its interpretation of the CSL that a majority of the members of CAB are needed to constitute a quorum; however, a majority of the members of CAB are also needed to act, as provided for in Section 1721-A(b) of the CSL.⁴

On July 24, 2019, with the Department’s Secretary and CAB Member Munger recusing themselves from the vote, CAB again voted on the substantive appeal resulting in another 3 to 1

³ Pursuant to Section 1729.1-A(f)(3) of the CSL, the Secretary is required to recuse himself from all appeals of decisions by the department, and is not to participate in any hearing, deliberation or vote on any appeal of a decision made by the department. 24 P.S. § 1729.1-A(f)(3).

⁴ Section 1721-A(b) of the CSL provides that “a majority of the members of [CAB] shall constitute a quorum, and a majority of the members of [CAB] shall have the authority to act upon any matter before [CAB].” 24 P.S. § 1721-A(b).

vote to deny Propel's appeal, which CAB did not recognize as a valid action and so tabled the matter.

On September 6, 2019, Propel filed a Motion to Permit CAB Member Munger to Vote. On September 16, 2019, the Department filed its response in opposition thereto. On September 25, 2019, Propel withdrew its Motion to Permit CAB Member Munger to vote.

On September 25, 2019, Propel filed a Motion to Allow Vote of 3-1 in this Matter As Proper arguing that the CSL does not require a majority vote of all CAB members to decide the matter before the quorum; and even if the CSL requires such, the recusals effectively reduced the total number of CAB members. On October 7, 2019, the Department filed its response thereto.

At the October 22, 2019 meeting of CAB, the Motion to Allow Vote of 3-1 in this Matter As Proper was argued and voted upon by the same four participating CAB members, without those who recused, as in prior Propel votes. CAB unanimously voted to deny the Motion to Allow Vote of 3-1 in this Matter as Proper. CAB again proceeded to vote on the appeal which resulted in another 3 to 1 vote to deny Propel's substantive appeal, and the matter was tabled for revote at the next meeting of CAB on December 3, 2019.⁵

On November 27, 2019, CAB issued a written order denying Propel's Motion to Allow the Vote of 3-1 in this Matter as Proper.

On December 18, 2019, Propel sought an allowance of appeal from an interlocutory order by permission and filed with CAB an application pursuant to Pa.R.A.P. 1311 seeking to have CAB's November 27, 2019 Order amended to include language required under 42 Pa.C.S. § 702(b). The Department provided its response thereto on December 30, 2019 asserting that

⁵ On December 3, 2019, CAB revoted on Propel's appeal resulting in the same 3-1 vote to deny the appeal, and as before, it was considered to be a nonactionable vote. Subsequently, CAB revoted at its January 14, 2020 meeting with the same voting outcome.

Propel's application was untimely filed because it was beyond 10 days after service of the Order, as provided for in 1 Pa. Code § 35.225, and because it did not meet the requirements of Section 702(b) to permit CAB to modify the November 27, 2019 Order to include interlocutory appeal language. Argument was scheduled for CAB's next meeting on January 14, 2020.

Additionally, on December 26, 2019, Propel appealed from CAB's November 27, 2019 Order, based on an alternate position that CAB's Order was appealable as a matter of right as a collateral order, by filing in Commonwealth Court a Petition for Review of a Quasi-Judicial Order Dated November 27, 2019 in Charter Appeal Board Docket No. 2018-06 (Docket No. 1826 CD 2019). Propel sought judgment reversing CAB's Order of November 27, 2019, declaring CAB's vote on June 18, 2019, or any subsequent votes of 3-1 denying Propel's appeal, did not violate 24 P.S. § 17-1721-A(b), and was, therefore, a valid vote of CAB, thus requiring CAB to proceed to issue a written decision from which Propel may then appeal from the denial. Moreover, Propel sought similar relief by simultaneously filing a Petition for Review in the Nature of a Declaratory Judgment Complaint under the Commonwealth Court's original jurisdiction (Docket No. 710 MD 2019).

At CAB's meeting on January 14, 2020, CAB was prepared to hear argument on Propel's application filed pursuant to Pa.R.A.P. 1311 seeking to have CAB amend its November 27, 2019 Order to include language required to allow Propel to appeal from the Order by permission. Propel, however, raised a jurisdictional issue and asserted that due to its initiation of litigation in Commonwealth Court, CAB was not permitted to consider Propel's Application filed pursuant to Pa. R.A.P. 1311. Propel explained that it was of the revised position that CAB's November 27, 2019 Order constituted a collateral order, as provided in Pa. R.A.P 1313, which would allow Propel to appeal as of right. As a result, CAB moved to take no action on Propel's application,

thereby deeming the request denied.⁶

On February 4, 2020, the Department filed a Second Motion to Supplement the Record with SPP scores issued by the Department for the 2018 - 19 school year. The purpose of the Motion was to provide evidence to CAB of the most recent MCSO Eligibility List reflecting SPP scores for the two most recent school years, 2017 – 18 and 2018 – 19, and to demonstrate that the proposed MCSO does not include at least one applicant school that has met the SPP threshold within the two most recent school years for which scores are available. See 24 P.S. § 17-1729.1-A(b). On February 7, 2020, Propel submitted a Response in Opposition to the Motion.

Also on February 7, 2020 Propel filed its own Motion to Supplement the Record with the purpose of providing CAB with evidence of Propel – McKeesport’s SPP score for the 2018-2019 school year and to establish that the applicant school is once again in the top 25% for 2018 – 19, based upon the updated MCSO Eligibility List. The Department’s response thereto was due on February 18, 2020; instead, on February 13, 2020 the Department filed a Motion for an Extension of Time until February 28, 2020 to file a response. On February 14, 2020, the Department’s Motion for an Extension of Time was granted, in part, and denied, in part, with the Department’s response to Propel’s Motion to Supplement the record due on February 20, 2020. The parties’ respective Motions to Supplement the Record were scheduled to be argued at CAB’s meeting on February 25, 2020.

On February 20, 2020, prior to CAB’s scheduled meeting, the parties submitted Joint Stipulations seeking to admit into the record evidence with respect to the most recent MCSO Eligibility List and Propel – McKeesport’s SPP score for the 2018-2019.⁷ Consequently, the

⁶ At the January 14, 2020 meeting of CAB, the members voted 4-0 to take no action on Propel’s Application Pursuant to Pa.R.A.P. 1311 to Amend Orders to Include Language Required Under 42 Pa.C.S. § 702(b).

⁷ The Joint Stipulations contained one stipulated fact, that Propel - McKeesport had a 2018-2019 Act 82 Building-level Performance Profile (formerly known as the SPP) Score of 78.4, and one exhibit which was the Charter

parties' respective Motions to Supplement were deemed moot, and the Joint Stipulations were admitted into the record at the February 25, 2020 meeting of CAB.

On October 13, 2020, the Commonwealth Court heard argument in the matter of Propel Charter Schools v. Pennsylvania Dept. of Ed. and State Charter Appeal Board, Docket No. 1826 CD 2019, and subsequently ruled that the 3-1 vote of CAB was proper, and issued an Order on November 20, 2020, which reversed CAB's November 27, 2019 Order. It was further ordered that Propel had (30) days from the date of the Court's Order to appeal from CAB's denial of Propel's substantive appeal.

Although CAB voted 3 to 1 on June 18, 2019 to deny Propel's substantive appeal, CAB did not issue a written decision denying the appeal because of its interpretation of Section 17-1729.1-A(f)(iii) of the CSL that a 3 to 1 vote was considered to be nonactionable. However, given the Court's November 20, 2020 ruling, CAB now issues its written decision in support of its June 18, 2019 vote of 3 to 1 denying Propel's appeal, based on the Findings of Fact and Conclusions of Law as discussed below which also include its decision in support of its May 21, 2019 vote of 4 to 0 denying Propel's appeal from the Hearing Officer's Memorandum Order allowing the record to be supplemented.

FINDINGS OF FACT

1. In February 2018, the Pennsylvania Department of Education ("Department") published an application form to be completed by charter schools seeking to establish a MCSO. (Official Notice, Department Records).⁸

Schools Meeting Multiple Charter School Organization Eligibility Criteria – 24 P.S. § 17-1729.1-A, containing 2017-2018 and 2018-2019 data.

⁸ Official notice of such matters as might be judicially noticed by courts is permissible under the General Rules of Administrative Practice and Procedure, 1 Pa. Code §35.173, which provide, in pertinent part, as follows:

§35.173. Official notice of facts.

2. A “Multiple Charter School Organization Application Guide” was published in conjunction with the application form. (Official Notice)
3. By way of its Application filed with the Department on May 7, 2018, the following eight charter schools, all Pennsylvania nonprofit corporations, sought to consolidate and become Propel Charter School MCSO: Propel Schools (operating as Propel Charter School – Homestead); Propel Charter School - East; Propel - McKeesport; Propel Charter School - Montour; Propel Charter School - Northside; Propel Charter School - Pitcairn; and Propel Charter School – Hazelwood (collectively, “the Propel Schools”). (Joint Stipulation no. 1)
4. The Propel Schools are located at the following addresses: 129 East 10th Avenue, Homestead, PA 15120; 1161 Monroeville Avenue, Turtle Creek, PA 15145; 2412 Versailles Avenue, McKeesport, PA 15132; 340 Bilmar Drive, Pittsburgh, PA 15205; 1500 Yost Boulevard, Pittsburgh, PA 15221; 1805 Buena Vista Street, Pittsburgh, PA 15212; 435 Agatha Street, Pitcairn, PA 15140; and 5401 Glenwood Avenue, Pittsburgh, PA 15207. The Propel administrative offices are located at 3447 East Carson Street, Pittsburgh, PA 15203. (Joint Stipulation nos. 2 and 3)
5. On May 4, 2018, Propel submitted the Application to the Department which received it on May 7, 2018. (Joint Stipulation nos. 4 and 5)
6. The Application followed the standard application developed by the Department pursuant to 24 P.S. §17-1729.1-A(c), pursuant to which each school district and the Department

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

had forty-five (45) days to adopt a resolution either to approve or deny the Application.

(Official Notice, Department Records)

7. In addition to its Application to the Department, Propel also submitted its application to the Pittsburgh Public Schools, Steel Valley School District, Woodland Hills School District, Penn Hills School District, McKeesport School District, Montour School District and Gateway School District. (Joint Stipulation no. 7)
8. On or about June 18, 2018, the School District of Pittsburgh formally denied the Application via a letter from its solicitor, Weiss Burkardt Kramer, LLC. (Joint Stipulation no. 8)
9. No other district responded to the Application within 45 days of receipt and, therefore, the Application was deemed approved by Steel Valley, Woodland Hills, Penn Hills, McKeesport, Montour, and Gateway school districts. (Joint Stipulation no. 9)
10. On June 20, 2018, the Department issued a denial of the MCSO Application. (Joint Stipulation no. 10)
11. On July 17, 2018, Propel filed the instant appeal to the CAB as provided for by the CSL. (Joint Stipulation no. 11)
12. Propel's Application relied on Propel – McKeesport as its lone qualifying school for purposes of the CSL requirement that, for an MCSO to be approved, at least one of its member schools must have an SPP score that is among the top twenty-fifth percentile of Pennsylvania charter schools as measured by the SPP for the most recent two (2) school years. (Application, question 1f)
13. On December 21, 2018, the Department published SPP scores for the 2017-2018 school year. (The Department's January 29, 2019 Motion to Supplement Record, Exhibit A hereto)

14. On January 9, 2019, based upon the SPP scores for the 2017-2018 school year, the Department updated the MCSO Eligibility List. (The Department's January 29, 2019 Motion to Supplement Record, Exhibit A hereto)
15. At the time Propel filed its Application with the Department on May 7, 2018 and the Department issued its denial on June 20, 2018, which occurred during the 2017 – 18 school year, the two most recent school years for which SPP scores were available were the 2015 – 16 and 2016 – 17 school years.
16. For purposes of the Application, the “most recent two (2) school years” were 2017 – 18 and 2018 – 19.⁹ (Official Notice)
17. Propel – McKeesport qualified in the top twenty-fifth percentile for the 2015 – 16 and 2016 – 17 school years, but not 2017 – 18. (Official Notice, Department Records; The Department's January 29, 2019 Motion to Supplement Record, Exhibit A hereto)
18. Propel – McKeesport again qualified in the top twenty-fifth percentile for the 2018 – 19 school years. (Official Notice, Department Records; Joint Stipulations – Feb. 20, 2020, Exhibit B hereto)
19. No other Propel schools proposed for consolidation tested in the top twenty-fifth percentile in 2016 – 17, 2017 – 18, or 2018 – 19 (Application, question 1f; The Department's January 29, 2019 Motion to Supplement Record, Exhibit A hereto; Joint Stipulations – Feb. 20, 2020, Exhibit B hereto)

⁹ The record was supplemented with MCSO Eligibility List information for the 2017 – 2018 school year. The MCSO Eligibility List information for the 2018 – 2019 school year was also released, and the parties stipulated to supplementation of the record with the updated MCSO Eligibility List for the 2018 – 2019 school year for which scores were available.

CONCLUSIONS OF LAW

1. The CAB has jurisdiction over this matter. 24 P.S. § 17-1729-A; *Northside Urban Pathways Charter School v. State Charter School Appeal Board*, 56 A.3d 80 (Pa. Cmwlth. 2012).
2. The CSL governs the charter application/approval process as well as the MCSO application/approval process. 24 P.S. § 17-1701-A *et. seq.*
3. The intent of the General Assembly in enacting the CSL was, *inter alia*, to establish and maintain schools that improve pupil learning, to increase learning opportunities for all pupils, and to hold charter schools accountable for meeting measurable academic standards. 24 P.S. § 17-1702-A.
4. The MCSO provision (“MCSO Law”) of the CSL sets forth the requirements for multiple charter schools to organize themselves into a single educational organization. 24 P.S. § 1729.1-A.
5. One of the requirements set forth in the MCSO Law provides that schools so organizing themselves must all have SPP scores among the top twenty-fifth percentile of Pennsylvania charter schools as measured by the SPP for the most recent year for which an SPP score is available. 24 P.S. § 1729.1-A(b)(1)(iii).
6. If a charter school’s SPP score ranking is not in the top twenty-fifth percentile as required by the MCSO Law, then it may become part of an MCSO only if at least one of the schools to be unified within the organization has an SPP score that was among the top twenty-fifth percentile of Pennsylvania charter schools as measured by the SPP for the most recent two (2) school years. 24 P.S. § 1729.1-A(b)(2).

7. Propel failed to establish in its Application that at least one of its consolidating schools was among the top twenty-fifth percentile for the most recent two (2) school years for which such scores were available. (Findings of Fact No. 12 – 19)

DISCUSSION

I. Introduction

This case is an appeal of the denial of Propel's MCSO Application by the Department. The denial was based on the following concerns: (1) Propel's failure to properly consider how the merger of eight schools into a single LEA will affect the schools' operations, especially those that are likely to have direct impacts on special education and other services; (2) the Application's failure to identify an administrator responsible for special education students; (3) Propel's apparent lack of understanding as to how consolidation would affect federal funding allocations; (4) the lack of evidence of established procedures ensuring meaningful parent and community participation on the MCSO's Board of Trustees; (5) Propel's failure to sufficiently acknowledge the application of the Public Official and Employee Ethics Act to the proposed Board and school administrators, especially with regard to State law requirements for filing Statements of Financial Interest; (6) the fact that Propel submitted its Application to the Department nearly simultaneously with its Applications to the requisite School Districts in disregard of the sequencing required by the terms of the Application; and (7) Propel's alteration of a Compliance Certificate that was required to accompany its Application in direct violation of explicit instructions in the Application. For the reasons discussed below, which reflect some but not all of the above-enumerated concerns, the denial of the Application will be sustained, and the appeal dismissed.

II. Scope of Review and Burden of Proof

In reviewing a denial of an application under the CSL (which includes the MCSO Law), the CAB applies a *de novo* standard of review which requires “a new hearing or a hearing for the second time, contemplating an entire trial in [the] same manner in which [the] matter was originally heard and a review of [the] previous hearing. On hearing ‘*de novo*’ [the] court hears [a] matter as [a] court of original and not appellate jurisdiction.” *Capuano v. Capuano*, 823 A.2d 995, 1002 - 03 (Pa. Superior 2003) (quoting Black's Law Dictionary 649 (5th ed.1979)). “[D]*e novo* review ... entails full consideration of the case anew. The reviewing body is in effect substituted for the prior decision maker and redecides the case.” *Commonwealth v. Virnelson*, 243 A.2d 464, 469 (Pa. Superior 1968). However, although the CAB applies a *de novo* scope of review, it also must “give appropriate consideration” to the findings of the Department, while making an independent determination as to the merits of the application. *West Chester Area School District v. Collegium Charter School*, 812 A.2d 1172, 1180 (Pa. 2002) (regarding charter school applications). Accordingly, in rendering a decision such as the instant one, the CAB must specifically articulate its reasons for agreeing or disagreeing with the underlying findings. See, 24 P.S. § 17-1717-A(i)(6) (pertaining to charter school applications).

The degree of proof required to establish a case before an administrative tribunal is a preponderance of the evidence. *Lansberry v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). A “preponderance” is that quantity and quality of evidence demonstrating that an averment or allegation is more likely to be true than false. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854, 856 (Pa. 1949). If viewed on a balancing scale, a preponderance of evidence will tip the scale, however slightly, in favor of the allegation that is more likely to be true. *Id.*

III. Relevant Provisions of the MCSO Law

The Law contains the following provisions relevant to the merits of Propel's Application and this Appeal.

(b) (1) A charter school that, within either of the most recent two (2) school years, has failed to meet any of the following shall not be eligible to consolidate with another charter school:

(iii) A school performance profile score that is among the top twenty-fifth percentile of Pennsylvania charter schools as measured by the school performance profile for the most recent year for which a school performance profile score is available.

(2) A charter school that has failed to meet any of the requirements of paragraph (1) may consolidate if the consolidation includes a charter school demonstrating that it has satisfied such requirements for the most recent two (2) school years.

(c) Within ninety (90) days of the effective date of this section, the department shall develop and issue a standard application form that multiple charter school organization applicants must submit to the department and to the local board of school directors of each school district that granted the initial charter of any charter school in the proposed consolidation. The application form shall contain the following information:

(4) An organizational chart clearly presenting the proposed governance structure of the multiple charter school organization, including lines of authority and reporting between the board of trustees, chief administrator, administrators, staff and any educational management service provider

(5) A clear description of the roles and responsibilities for the board of trustees

(6) A clear description of the method for the appointment or election of members of the board of trustees.

(7) Standards for board of trustees performance, including compliance with all applicable laws, regulations and terms of the charter.

(9) Any other information as deemed necessary by the department.

(f) Appeals shall be as follows:

(2) In considering an appeal under this section, the appeal board shall

- (i) Review the decision made by either the department or the school district on the record as certified by the entity that made the decision being appealed, provided that the appeal board may allow the department, a school district or the applicant for consolidation to supplement the record if the supplemental information was previously unavailable.

24 P.S. § 1729.1-A.

MCSO APPLICATION PROVISIONS

The Application requires the following information:

8b. Describe the process for the appointment or election of members of the MCSO Board of Trustees. How will appointment or election procedures ensure appropriate representation from individual charter schools? *Applicants must include both a listing of the proposed Board membership (included as a required attachment) and a clear description of the method for the appointment or election of members of the Board of Trustees.* (Italics in the original.)

8c. Describe how will the proposed merger support the Board of Trustees' capacity to govern the charter schools within the MCSO. *Applicants must include a clear description of the roles and responsibilities for the Board of Trustees*" (Italics in the original.)

10a. (Line 28) [State the] Number of students receiving special education services.

10b. Special Education Historical and Current Year School Enrollment Detail (*include counts by primary disability only; no student should be counted in multiple categories*)(italics in the original)

Autism
Deaf-Blindness
Deafness
Emotional Disturbance
Hearing Impairment
Intellectual Disability
Multiple Disabilities
Orthopedic Impairment

Other Health Impairment
Specific Learning Disability
Speech or Language Impairment
Traumatic Brain Injury
Visual Impairment (incl. blindness)

10c. Describe in what ways the merger may impact ... services to students receiving special education services

10e. Special Education Projected Enrollment Detail (*include counts by primary disability only; no student should not [sic] be counted in multiple categories*)

Autism
Deaf-Blindness
Deafness
Emotional Disturbance
Hearing Impairment
Intellectual Disability
Multiple Disabilities
Orthopedic Impairment
Other Health Impairment
Specific Learning Disability
Speech or Language Impairment
Traumatic Brain Injury
Visual Impairment (incl. blindness)

10h. Are class sizes and caseloads for students receiving special education services at appropriate levels to provide FAPE (Free and Appropriate Education), as per IDEA and Chapter 711)?

Application, questions 8b. – 10h.

In the discussion below, each of Propel's arguments appealing the Department's denial of its MCSO Application will be addressed in light of the above-quoted provisions of the MCSO Law and the Application.

IV. Propel's Grounds for Appeal: Pennsylvania Department of Education's Motion to Supplement the Record

On January 29, 2019, the Department filed a Motion to Supplement the Record with the SPP scores issued by the Department for the 2017 - 18 school year. The MCSO Eligibility List containing the 2017 – 18 school year SPP scores was not updated until January 9, 2019. The purpose of the Motion was to provide CAB with evidence that Propel - McKeesport – the only school among the eight applicant schools with an SPP score in the top quartile of charter schools in the Commonwealth – no longer was ranked in the top quartile as it had been for the 2015 – 16 and 2016 – 17 school years.

Regarding CAB's review of the record in an appeal, the CSL related to MCSO applications provides that CAB shall "[r]eview the decision made by either the department or the school district on the record as certified by the entity that made the decision being appealed, provided that the appeal board may allow the department, a school district or the applicant for consolidation to supplement the record if the supplemental information was previously unavailable." 24 P.S. 17-1729-A(f)(1)(i). The Commonwealth Court has helped frame what "previously unavailable" means by stating that it "cannot include information that could have been obtained and submitted for inclusion into the record prior to the district's vote." *Carbondale Area School District v. Fell Charter School*, 829 A.2d 400, 405 (Pa. Cmwlth. 2003).

It is without question that the information related to SPP scores issued by the Department for the 2017 - 18 school year was previously unavailable and could not have been obtained or submitted for inclusion in the record prior to the Department's decision to deny Propel's MCSO Application. As such, the evidence related to the Charter Schools Meeting Multiple Charter School Organization Eligibility Criteria – 24 P.S. § 17-1729.1-A, containing 2016 – 17 and 2017 - 18 data, appended to the Department's Motion to Supplement, clearly constitutes admissible

supplementary evidence. Thus, the Hearing Officer properly granted the Department's Motion to Supplement, and the updated MCSO Eligibility List, containing the 2017 -18 school year SPP scores, shall be admitted into the record. Similarly, on February 4, 2020, the Department filed a Second Motion to Supplement the Record with the MCSO Eligibility List, containing the 2018 - 19 school year SPP scores. The purpose of the Second Motion was to provide CAB with evidence that the proposed MCSO still did not contain at least one applicant school that had met the SPP threshold within the two most recent school years for which scores are available. *See* 24 P.S. §17-1729.1-A(b). As previously argued, the Department sought to supplement the record to include the most recent MCSO Eligibility List reflecting SPP scores for the two most recent years, which would be 2017 – 18 and 2018 -19. Like the 2017 – 18 SPP scores, the 2018 – 2019 SPP scores were not available prior to the Department's decision to deny Propel's MCSO Application.

Propel filed its opposition to the Department's Second Motion to Supplement the MCSO Eligibility List containing the 2018 - 19 school year SPP scores. Propel then filed its own Motion to Supplement the Record with the purpose of providing CAB with evidence of Propel – McKeesport's SPP score for the 2018-2019 and to establish that the applicant school is once again in the top 25% for 2018 – 19, based upon the updated MCSO Eligibility list, therefore demonstrating that one of the schools in Propel's MCSO Application was in the top twenty-fifth quartile for at least one of the two most recent schools year.

Ultimately, Propel and the Department submitted Joint Stipulations seeking to admit into the record evidence with respect to the most recent MCSO Eligibility List and Propel – McKeesport's SPP score for the 2018-2019 school year. Thus, the updated MCSO Eligibility List, containing the 2018 - 19 school year SPP scores, is a part of the record.

As discussed below and more further in other sections within this decision, given the supplemented information that is now part of the record -- the updated MCSO Eligibility List containing the SPP scores of both the 2017 – 18 and 2018 – 19 school years -- CAB must determine the relevance and materiality of the supplemented information on the substantive appeal.

A charter school's SPP score is a relevant factor because CAB is statutorily required to consider, when deciding upon an MCSO application, whether the MCSO has a charter school meeting the threshold two-year requirement. The approval of a proposed MCSO is disallowed unless the application includes at least one charter school that has met the SPP threshold of having a charter school within the twenty-fifth quartile of Pennsylvania Charter Schools for the two most recent school years for which scores are available. 24 P.S. § 17-1729.1-A(b). Therefore, the most recently available SPP data is a relevant consideration for CAB in this matter.

With respect to Propel – McKeesport's SPP score for the 2018 – 19 school year, the data is not entirely relevant as it does not establish that Propel has a charter school in its MCSO application that that has been in the top twenty-fifth percentile of Pennsylvania Charter Schools for the two most recent years. Even considering that McKeesport's SPP score for the 2018 – 19 school year was in the top twenty-fifth quartile, it remains that McKeesport's SPP score for the 2017 – 18 school year was not in the top twenty-fifth quartile; and Propel had no other charter school in the top twenty-fifth quartile for the 2017 – 18 or 2018 – 19 school years.

V. **Propel's Grounds for Appeal: Pennsylvania Department of Education's Denial of Propel's MCSO Application**

Propel's Petition expressed the following substantive bases for its Appeal:

- A. Its Application contained all of the information required by 24 P.S. § 17-1729.1-A for an MCSO to be approved. Any other information that PDE found to have been lacking was not information that was required under the statute.
- B. PDE failed to give it the opportunity to clarify any alleged deficiencies or misconceptions in the Application.
- C. Nothing in the MCSO Law required Propel to delay filing its Application with the PDE until after the time had passed for all the districts to rule on it.
- D. The Application provided sufficient information to demonstrate that Propel is properly prepared to provide special education programs and services to the extent required by statute. Propel was not required by statute to identify a special education administrator or staff.
- E. Propel provided sufficient information to show that it planned appropriately for the receipt and distribution of federal funds.
- F. PDE improperly grouped community outreach and accountability with the appointment and election of the Board.
- G. Propel's Board does comply with the Public Official and Employee Ethics Act, and nothing in the MCSO or the Application itself required Propel to specifically state every part of every law that applies to it and its operations.
- H. Propel altered the Compliance Certificate only to remove the language stating that it had submitted Applications to all involved School Districts as least 45 days prior to submitting it Application to PDE. Propel did not follow that sequencing because it was not required to do so under the statute.
- I. Propel-McKeesport's 2017 – 18 SPP rankings were not relevant to the Application that it filed before such rankings had been compiled and published.

Each of these arguments will be addressed in turn.

A. Quantity and quality of information provided in the Application.

Propel's position as to its first issue on appeal is that its Application contained all of the information required by 24 P.S. § 17-1729.1-A for an MCSO to be approved, and so it was entitled to approval. Propel's position rejected the notion that the MCSO Law allowed discretion for the Department to demand information above and beyond that which is specifically required by the statutory language. Propel's Brief argues that the information required by the Application

has the effect of making it “jump through . . . unnecessary hoops” in order to obtain MCSO approval. (Propel’s Brief, p. 29.) Propel cites *Montessori Regional Charter School v. Millcreek Township District*, 55 A.3d 196 (Pa. Cmwlth. Ct. 2012) for its admonition that the CSL was enacted for purposes of creating a streamline charter school application process and not to create “unnecessary hoops” through which an applicant must jump first.

Propel’s Brief devotes a significant amount of verbiage to its argument that the Application’s requirements cannot be enforced as *regulations*, which Propel asserts is what the Department is trying to do. It notes that the Application form was not published for public comment under the Commonwealth Documents Law, 45 P.s. § 1102(12), as would be required for a regulation to be officially promulgated and enforceable as law. Propel argues that the Application’s requirements are effectively regulations because they pass the “binding norm test” which differentiates an agency’s regulations from its statements of policy. An agency’s publication will be considered to be a “binding norm” and therefore a regulation if its plain language and interpretation by the agency show that it is intended to establish a uniform statewide policy that will be binding on both the public and the agency. *Millcreek Manor v. Department of Public Welfare*, 796 A.2d 1020, 1026 (Pa. Cmwlth Ct. 2002)

The Department responds that the statute gives it full discretion to require additional information in the formal application it was required to develop and publish, and so its concerns regarding issues not addressed in the MCSO Law are as legitimate and binding as the statutory issues, regardless of whether or not the application was first vetted through the regulatory review process. Neither party cites caselaw directly supporting its position, although the Department generally references *Cherry v. Pennsylvania Higher Education Assistance Agency*, 642 A.2d

463, 464 (Pa. 1994) for the proposition that an agency is entitled to deference in its interpretations of legislation within its area of expertise.

The plain language of Section 17-1729(c)(9) of the MCSO Law provides that the Department may require “any other information [it] deem[s] necessary” to be included in an MCSO Application. 24 P.S. § 1729.1-A(c)(9). Through this language, the information required by the Application became information required by the MCSO Law. Thus, MCSO eligibility criteria developed by the Department and not by the General Assembly may nonetheless provide grounds for denial of an MCSO Application even though those criteria were not noticed for public comment and published as regulations. In this case, the General Assembly deferred to the Department’s particularized familiarity with the operations of charter schools serving multiple school districts, and therefore gave the Department full discretion to employ that knowledge as gatekeeper to MCSO eligibility. Had the legislature intended for the Department to obtain public input through the regulatory approval process to guide its gatekeeping actions, it would have included language to the effect that the Department “shall promulgate regulations” setting forth MCSO eligibility standards.¹⁰ The MCSO Law lacking such a proviso, Propel’s arguments in support of its appeal are without merit to the extent that they fault the Department for denying the Application for reasons not specified in the MCSO Law.

B. *Failure to provide opportunity to address deficiencies.*

Propel’s Brief does not elaborate or follow up on the argument expressed in its Petition of Appeal regarding its lack of an opportunity to address or clarify deficiencies or misconceptions

¹⁰ See, e.g. Professional Nursing Law, Act of Dec. 20, 1985, P.L.409, No.109, 63 P.S. § 215(a): “The Board shall, once every year and at such other times and under such conditions *as shall be provided by its regulations*, examine all eligible *applicants for licensure*; and shall, subject to the provisions of section 6 of this act, issue a license to each person passing said examination to the satisfaction of the Board.”

in the Application. Significantly, the MCSO Law does not in fact contain a provision requiring the Department to afford a rejected applicant an opportunity to supplement or clarify its application prior to rejection. Thus, Propel may be assumed to have abandoned this argument.

C. Sequential appeals.

Propel asserts that nothing in the CSL requires an MCSO to file its Applications with school districts and the Department in any particular sequence or according to any particular timetable. Propel further notes that section 17-1729.1-A(a)(1) lists the Department approval before it lists school district approval, thus indicating that the legislature may well have intended for an MCSO to seek approval from the Department first, rather than vice versa. Propel's argument on this point is supported by the MCSO Law to the extent that it contains nothing stating that failure to follow sequencing instructions as to filing dates of an MCSO Application shall invalidate the Application. However, the Application Guide published by the Department explicitly states that "the most reasonable way to implement the [MCSO's] requirements relating to submission and review is through a sequential review." (February 2018 Application Guide, p. 2). The Application Guide goes on to state that "[a]fter approval by the chartering school district(s) (or CAB) or the passage of 45 days, the MCSO Application is submitted to the Department." (February 2018 Application Guide, p. 2). While the Application Guide's language is not expressed as a command or mandate (e.g., "the review shall be sequential"), no reasonable reading of that language would interpret it as providing an applicant with discretion in the timing of its filings, and an applicant choosing its own filing sequence would necessarily do so at its peril. Therefore, Propel's argument in this regard provides no grounds on which to reverse the denial of its Application.

D. Information sufficient to show preparedness to provide Special Education services.

As to the Department's concern with Propel's plans for Special Education ("SE") programs and staffing, Propel cited *In re Gillingham Charter School*, CAB Docket No. 2010-7, for CAB's determination that applicants do not need to provide detailed, specific information regarding special education compliance. (Propel's Brief, p. 23). Propel further points out that the proposed MCSO staffing does identify four "Special Education Coaches." (Propel's Brief, p. 23). In response, the Department's Brief states that Propel's proposal to concentrate "low incidence" special education students at "particular schools" may "violate least restrictive environment mandates for these students." (The Department's Brief, p. 17). The parties' arguments each have some merit that might require further inquiry and discussion if they were the only arguments involved in this case. However further inquiry is not necessary in this case because, as discussed below, the CAB concludes that when Propel-McKeesport lost its top-quartile SPP ranking, Propel lost its eligibility to operate as an MCSO.

E. Financial planning and federal funds.

With regard to the issues of its financial planning vis-à-vis receipt of federal funding, Propel argues that it cannot reasonably be expected to predict the future with regard to how federal funding will be "divvied up" between consolidated schools. (Propel's Brief, p. 24). Propel cites prior CAB decisions, e.g., *Gillingham, supra*, for its policy that "CAB has historically specifically rejected school district attempts at the requirement of minutiae from a charter school applicant in the description of their special education compliance."

While the Department's concerns regarding allocation of federal funding among its member schools are not baseless, it is important to note that nothing in section 17-1729(c) addresses or even mentions funding issues. Thus, for such issues to be an enforceable basis for

denying an MCSO Application, it must be assumed that section 17-1729(c)(9) gave the Department authority to require both the disclosure of such information in an application as well as a description of the applicant's plans for allocation of funding. However, the application form does not require such explanations, but rather follows the CAB's general hands-off approach to funding concerns regarding an MCSO application. Accordingly, such concerns did not provide a basis for denial of Propel's Application.

F. Governance structure and Ethics Act compliance.

The Department's denial expressed concern with Propel's governance in terms of the lack of seats on the Board of Trustees for parents, students or alumni or other means of inclusion of the community in the MCSO's governance. In response, Propel asserts that its Application contained a list of proposed trustees and corresponding terms of office, along with the resumes of those individuals. Propel argues that an identification of a selection process for trustees is the sole requirement of the MCSO Law; it does not require a justification for the particular process being implemented or the selection of each and every trustee. Propel further argues that the neither the CSL nor the Application form require community outreach and engagement. Propel asks rhetorically how an *applicant* could be expected to have *established* procedures for parent and community input when, being only in the application stage, it necessarily cannot have anything *established* yet.

Regarding the Trustee selection and "Friends of Propel" issue, it is important to note that there are only four relevant requirements expressed in the MCSO Law¹¹ for the contents of an Application: (1) "[a]n organization chart clearly presenting the proposed governance structure ... including lines of authority and reporting between the board of trustees" and other

¹¹ Departing from its prior argumentation strategy, the Department does not invoke section 17-1729(c)(9) as grounds for requiring additional information above and beyond the statute's four requirements about Trustees.

administrators and staff; (2) “[a] clear description of the roles and responsibilities for the board of trustees ...”; (3) “[a] clear description of the method for the appointment or election of ... trustees”; and (4) “[s]tandards for board of trustees performance....” 24 P.S. § 17-1729.1-A(c)(4) – (7).

The Department’s concerns with the Application’s lack of eligibility information for the Friends of Propel group do not easily fall within any of these four categories of information. As Propel argues, the above-cited statutory provisions require disclosure of only the hierarchy, roles, *method* of appointment, and performance standards for Trustees (which standards would only apply post-appointment). Again, these provisions require only a *disclosure of information* and do not express *Trustee eligibility criteria* on which an Application will rise or fall. Accordingly, at least as expressed in its denial of the Application, the Department’s concerns about the “Friends of Propel” organization and regarding community involvement in Propel’s Board did not provide grounds on which to deny the Application.

G. Alteration of the Application form.

Propel argues that the Department cannot deny its Application merely because it altered the Application form. Propel again asserts that the Department’s denial is effectively an attempt to enforce the Application form as a regulation even though it was not published or promulgated in accordance with the Commonwealth Documents Law. Were the alteration of the form the lone issue on which the Department denied the Application, then Propel’s argument in this regard may have merited consideration. However, because Propel lost its MCSO eligibility when Propel – McKeesport lost its top quartile SPP ranking, this argument does not need to be addressed.

H. Propel-McKeesport's loss of status in top quartile of SPP score rankings.

Again, as noted above, an MCSO application cannot be approved if one of the member schools was not in the top quartile of SPP rankings in the preceding school year unless another member school has been in the top quartile for the preceding *two* school years for which such rankings have been calculated. 24 P.S. § 1729.1-A(b)(1)(iii) and (2).

On May 7, 2018 when Propel filed its Application, Propel-McKeesport had been ranked within the top quartile of Pennsylvania's SPP rankings for the preceding two school years (*i.e.*, 2015 – 16 and 2016 – 17). However, it fell from those rankings for the 2017 – 18 school year. These latter rankings were not available on the date of the Department's denial of the Application, but they became available during the course of the instant appeal.¹² Accordingly, the Department filed a Motion to Supplement the record with those newly available figures pursuant to the explicit provision of the MCSO Law that provides for supplementation of a record with information that was "previously unavailable." 24 P.S. § 1729.1-A(f)(2)(i). The Motion to Supplement was granted, thus depriving Propel of its ability to claim that one of its member schools had earned the required SPP score ranking for the "most recent two (2) school years" for which school performance profiles were available.

Propel had opposed the Motion to Supplement on several grounds involving relevancy of the 2017 – 18 rankings. Propel's position was effectively that, even though it does not appear in the actual text of the CSL, the qualifier "as of the date of the Application" must be read into the "most recent two (2) school years" phrasing. Propel argued that any other reading would

¹² At the time of Propel's Application and the Department's June 20, 2018 decision, during the 2017 – 18 school year, the two most recent school years for which SPP scores were available were the 2015 – 16 and 2016 – 17 school years.

produce an “absurd result” because “the overall charter school application process contained in the entirety of the [Charter School Law]” was to be more streamlined, time-efficient, and retrograde to the kind of “moving target” that would be created by allowing an Application to be judged by each new SPP rankings for each new school year during which the Application is pending. (*Propel’s Reply Brief*, p. 2.) Propel acknowledged that the MCSO Law has not been tested by an appellate court but cited as analogous cases interpreting other provisions of the CSL. For example, in *Souderton Area School Dist. v. Souderton Charter School Collaborative*, 764 A.2d 688 (Pa. Cmwlth. Ct. 2000), the Court ruled that a charter school application could not be denied on the grounds that, by the time the application was addressed by CAB, the school had lost its prospective lease agreement for its proposed brick and mortar facility. As Propel pointed out, the Court effectively held that the application was to be judged as of the date it was initially filed.

Referencing 24 P.S. § 1717-A(e)(1), (6) and (7), Propel also opposed supplementation of the record citing the “mandatory timelines for action on both charter school applications and MCSO applications” as statutory illustrations of legislative intent not to allow for repeatedly re-evaluating an MCSO’s eligibility based on updated information, including previously unavailable SPP scores. (*Propel’s Reply Brief*, p. 6)

These arguments were well made but ultimately unpersuasive in light of the more overarching intent of the General Assembly in enacting the CSL, which provides in relevant part:

It is the intent of the General Assembly, in enacting this article, to provide opportunities for teachers, parents, pupils and community members to establish and maintain schools that operate independently from the existing school district structure as a method to accomplish all of the following:

- (1) Improve pupil learning.
- (2) Increase learning opportunities for all pupils.

(5) Provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system.

(6) Hold the schools established under this act accountable for meeting measurable academic standards

24 P.S. § 17-1702-A(1), (2), (5) and (6).

In support of the CSL's intent to hold charter schools accountable for meeting measurable academic standards, it appears that the General Assembly enacted the SPP score criteria in MCSO Section 17-1729.1-A(b)(1) and (2) as quality-control measures for schools seeking to consolidate. If an applicant school cannot demonstrate its success as measured by its ranking, then it cannot be qualified to expand itself through the MCSO process. To hold that the CAB may only consider the SPP score rankings from the two years immediately prior to the application date would be inconsistent with the legislative intent to improve learning and learning opportunities, and to hold charter schools to measured standards. As the intent expressed in section 17-1702-A(1) and (2) for increased learning and learning opportunities is a continuing goal not limited to a single point in time, the issue of the quality of learning being provided by schools proposing to consolidate is *always* relevant. Therefore, SPP rankings are also always relevant.

With regard to Propel – McKeesport's SPP ranking, Propel further argued that it has been prejudiced by the length of the MCSO approval process, and that hypothetically it could have obtained its MCSO status if only that process had been more streamlined. While such a hypothetical may be accurate, it does not negate the fact that the statute contains built-in disqualifiers precluding MCSO eligibility for any applicant whose component schools fail to meet SPP ranking criteria during a period of time that is relative to the *date of approval* of the MCSO and not the *date of its application*. It also does not negate the fact that the express

purpose of the Law is to promote quality in the education and learning opportunities being offered to families through the charter school system. That need for quality is not fixed in time but rather is always extant, and the MCSO process established in the Law was not written for the convenience of MCSOs attempting to form, but rather to regulate their caliber and promote educational excellence for the benefit of students. While the General Assembly intended to promote expanded educational choices for students and parents, it clearly did not intend to do so at the expense of educational quality.

For purposes of the Application, the “most recent two (2) school years” were 2017 – 18 and 2018 – 19; and, given as much, Propel does not meet the application requirements for an MCSO under 24 P.S. § 17-1729.1-A(b)(1) because its application lacks a school within the twenty-fifth quartile of Pennsylvania Charter Schools for the two most recent school years for which scores are available, as evidenced by the updated MCSO Eligibility List.

CONCLUSION

Accordingly, as discussed above, while the Department’s denial of the Application was not independently supported by each and every reason stated in its denial letter, the Application as a whole failed to support Propel’s entitlement to MCSO status, especially in light of its current inability to meet the express requirements of 24 P.S. § 1729.1-A(b)(1)(iii) or (2). Therefore, the following Order will be entered:

Exhibit "A"

COMMONWEALTH OF PENNSYLVANIA
STATE CHARTER SCHOOL APPEAL BOARD

RECEIVED

JAN 29 2019

PROPEL CHARTER SCHOOLS,

Petitioners,

v.

PENNSYLVANIA DEPARTMENT OF
EDUCATION,

Respondent.

CAB Docket No. 2018-06

PDE Office of Chief Counsel

**PENNSYLVANIA DEPARTMENT OF EDUCATION'S
MOTION TO SUPPLEMENT THE RECORD**

Respondent, the Pennsylvania Department of Education ("PDE"), by and through its undersigned counsel, pursuant to 24 P.S. § 17-1729.1-A(f)(2)(i) and 1 Pa. Code §§ 35.177-35.178, to move to supplement the record in the above-captioned matter with previously unavailable School Performance Profile ("SPP") information, and in support thereof avers as follows:

Background

1. On May 7, 2018, the Pennsylvania Department of Education ("PDE") received a Multiple Charter School Organization ("MCSO") application ("Application") from Propel Charter Schools¹ seeking to consolidate eight charter schools pursuant to section 1729.1-A of the Charter School Law ("CSL"), 24 P.S. § 17-1729.1-A. *See Petition of Appeal, at ¶ 5.*

2. On June 20, 2018, PDE issued a decision denying Propel Charter Schools' Application. *See Certified Record ("CR"), Item #1.*

¹ The Petitioners are Propel Schools (operating as Propel Charter School-Homestead), Propel Charter School-East, Propel Charter School-McKeesport, Propel Charter School-Montour, Propel Charter School-Sunrise (operating as Propel Charter School-Braddock Hills), Propel Charter School-Northside, Propel Charter School-Pitcairn, and Propel Charter School-Hazelwood. The Petitioners are collectively referred to as "Propel Charter Schools."

3. By letter dated July 17, 2018, Propel Charter Schools filed an appeal of PDE's June 20, 2018 decision to the State Charter School Appeal Board ("CAB") initiating the above-captioned matter. *See Petition of Appeal.*

4. Propel Charter Schools' appeal was received by CAB on July 18, 2018. *See July 23, 2018 Letter from Alaina C. Koltash to Counsel.*

5. On August 2, 2018, PDE certified the record in the above-captioned matter to CAB. *See August 2, 2018 Letter from Emily A. Farren to the docket clerk.*

6. On August 28, 2018, CAB assigned this matter to the Honorable Hearing Officer. *See August 28, 2018 Letter from Alaina C. Koltash to Counsel.*

7. In order to be eligible to consolidate with another charter school as an MCSO, a charter school must, in part, have a school performance profile (SPP) score that is among the top twenty-fifth percentile of Pennsylvania charter schools as measured by the SPP for the most recent two years for which a SPP score is available. 24 P.S. § 1729.1-A(b)(1)(iii), (b)(2).

8. SPP scores are calculated, updated, and posted on PDE's publicly accessible website annually after the conclusion of the school year and after data verification by local education agencies.

9. Based upon the most recently available SPP scores, PDE publishes a list of charter schools that meet the SPP threshold criteria for purposes of consolidating as an MCSO, titled Charter Schools Meeting Multiple Charter School Organization Eligibility Criteria - 24 P.S. § 17-1729.1-A (MCSO Eligibility List).² 24 P.S. § 17-1729.1-A(b)(1)(iii), (b)(2).

² The MCSO Edibility List is published on PDE's publicly accessible website and can be found at: <https://www.education.pa.gov/K-12/Charter%20Schools/Pages/Charter-Schools-Meeting.aspx>.

10. At the time of application and PDE's June 20, 2018 decision, during the 2017-2018 school year, the two most recent school years for which SPP scores were available were the 2015-2016 and 2016-2017 school years.

11. On December 21, 2018, PDE published SPP scores for the 2017-2018 school year.

12. On January 9, 2019, based upon the SPP scores for the 2017-2018 school year, PDE updated the MCSO Eligibility List. A copy of the most recent MCSO Eligibility List, is attached hereto as Exhibit A and incorporated herein by reference.

Legal Standards

13. Under the General Rules of Administrative Practice and Procedure, relief may be sought by motion at any time in writing. 1 Pa. Code §§ 35.177, 35.178.

14. At least one of the charter schools seeking to consolidate with another charter school must have, within the two most recent school years, "a school performance profile score that is among the top twenty-fifth percentile of Pennsylvania charter schools as measured by the school performance profile for the most recent year for which a school performance profile score is available." 24 P.S. §§ 17-1729.1-A(b)(1)(iii), (b)(2).

15. CAB "may allow the department, a school district or the applicant for consolidation to supplement the record if the supplemental information was previously unavailable." 24 P.S. § 17-1729.1-A(f)(2)(i).

16. Information has been deemed to be "previously unavailable [when the information] was all developed after [a] hearing." See *Insight PA Cyber Charter School v. Pennsylvania Dep't of Educ.*, CAB 2015-01, *May 6, 2015 Order*, at 2. A copy of the May 6, 2015 CAB Order, is attached hereto as Exhibit B.

Argument

A charter school's SPP score is a relevant factor when considering an MCSO application. See 24 P.S. §§ 17-1729.1-A(b)(1)(iii), (b)(2). The record in this matter must be supplemented to include the most recent MCSO Eligibility List because the 2017-2018 SPP scores were not available at the time Propel Charter Schools appealed the June 20, 2018 decision, let alone at the time PDE considered the Application.

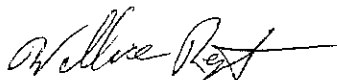
Section 1729.1-A of the CSL grants CAB the authority to permit "the department, a school district or the applicant for consolidation to supplement the record if the supplemental information was previously unavailable." 24 P.S. § 17-1729.1-A(f)(2)(i). CAB has previously permitted the record in a matter pending before it to be supplemented with information that was previously unavailable. See *Insight PA Cyber Charter School v. Pennsylvania Dep't of Educ.*, CAB 2015-01, *May 6, 2015 Order*. The supplemental information was admitted because it was all developed after PDE held a hearing on the proposed cyber charter school. *Id.* at 2.

The MCSO Eligibility List, containing 2017-2018 school year SPP scores, was not updated until January 9, 2019.³ The information PDE is seeking to supplement the record with in this matter was all developed after PDE reviewed Propel Charter Schools' Application, after PDE issued its denial decision, and after Propel Charter Schools' appealed, all of which is later in time than when the supplemental information admitted in the *Insight* matter was developed. As such, the MCSO Eligibility List, containing 2017-2018 school year SPP scores, should be admitted into the record.

³ SPP scores are not calculated until after a school year has concluded and data verification is completed by local education agencies.

WHEREFORE, the Pennsylvania Department of Education respectfully requests that the Hearing Officer grant its Motion to Supplement the Record and admit the current MCSO Eligibility List.

Respectfully submitted,



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Date filed: January 29, 2019

EXHIBIT A

Charter Schools Meeting Multiple Charter School Organization Eligibility Criteria – 24 P.S. § 17-1729.1-A

Charter School Name	2017	2018
Avon Grove CS	Top Quartile	Top Quartile
Baden Academy CS	Top Quartile	Top Quartile
Bucks County Montessori CS	Top Quartile	Top Quartile
Capital Area School for the Arts Charter School	Top Quartile	Top Quartile
Centre Learning Community CS	Top Quartile	Top Quartile
Christopher Columbus CS	Top Quartile	Top Quartile
City CHS	Top Quartile	Top Quartile
Environmental Charter School at Frick Park	Top Quartile	Top Quartile
Evergreen Community CS	Top Quartile	Top Quartile
Fell CS	Top Quartile	Top Quartile
Folk Arts-Cultural Treasures CS	Top Quartile	Top Quartile

Franklin Towne Charter Elementary School	Top Quartile	Top Quartile
Franklin Towne CHS	Top Quartile	Top Quartile
Freire CS	Top Quartile	Top Quartile
Infinity CS	Top Quartile	Top Quartile
Keystone Academy Charter School	Top Quartile	Top Quartile
Lehigh Valley Charter High School for the Arts	Top Quartile	Top Quartile
Lincoln Park Performing Arts CS	Top Quartile	Top Quartile
Mathematics, Science & Technology Community CS	Top Quartile	Top Quartile
Multicultural Academy CS	Top Quartile	Top Quartile
New Foundations CS	Top Quartile	Top Quartile
Philadelphia Performing Arts CS	Top Quartile	Top Quartile
Renaissance Academy Charter School	Top Quartile	Top Quartile
Souderton CS Collaborative	Top Quartile	Top Quartile
Vida Charter School	Top Quartile	Top Quartile
York Academy Regional Charter School	Top Quartile	Top Quartile
Young Scholars of Central PA CS	Top Quartile	Top Quartile

Eligibility determined as follows:

- Identify top quartile among all brick-and-mortar (including regional) charters that had SPP scores in 2016-17;
- Identify top quartile among all brick-and-mortar (including regional) charters that had SPP scores in 2017-18;
- Identify schools that appear on **both** above lists; and
- Remove any schools that have closed.

EXHIBIT B

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

Insight PA Cyber Charter School :
 :
 v. : **Docket No. CAB 2015-01**
 :
Pennsylvania Department of Education :

ORDER

Evidentiary motions were filed in this appeal by Insight PA Cyber Charter School (Insight) from the denial of its cyber charter application by the Pennsylvania Department of Education (Department). First, the Department filed a Motion in Limine on April 9, 2015. Subsequent to a conference call with counsel, Insight filed an Objection to the Motion in Limine and a Cross Motion to Supplement the Certified Record. The Department filed a Response, and the motions were argued by telephone conference call on May 5, 2015. The documents at issue are listed below:

1. Affidavit of Alan C. Kessler dated April 21, 2015 (3 pages);
2. Exhibit A to the Affidavit: a copy of an adhesive note containing a received date stamp from the Secretary's Office (1 page);
3. Exhibit B to the Affidavit: a series of e-mails and attachments dated from December 22, 2014 through January 16, 2015 (47 pages);
4. Exhibit C to the Affidavit: a January 26, 2015 letter from Alan C. Kessler to Charter School Office and attachments (122 pages);
5. Denial decisions of the Department concerning Insight's applications in 2012, 2013 and 2014 (54 pages); and

6. Affidavit of Lorna Bryant, dated May 2, 2015 (1 page).

Insight seeks to have all of these documents or items included in the record, in addition to the documents which the Department already certified to the Charter School Appeal Board (CAB).¹ The Department opposes the inclusion of all of these documents, although the Motion in Limine addressed only those documents known at the time of its filing: Items #3 and #4.

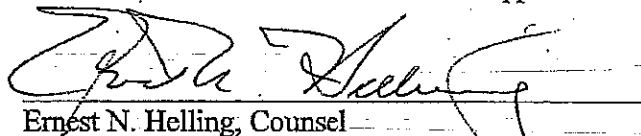
Based upon my review of the pleadings, the documents at issue, and after hearing argument, I find Items #3 and #4 to constitute supplemental information pursuant to section 1746-A(b) of the Charter School Law, which documents may be and hereby are included in the record of this appeal. I conclude that this information was previously unavailable in that it was all developed after the hearing on Insight's application.² Regarding the Department's decisions on Insight's applications (Item #5), the Motion to Supplement is denied. These decisions and the applications are available on the Department's website at <http://www.education.pa.gov/K12/Charter%20Schools/Pages/Charter-Applications.aspx#.VUkeLITD9t8> and are accessible by anyone. The applications and decisions are the records of the agency of which CAB is a part and are maintained in the normal course of the Department's work and therefore constitute official department records. See, Department of State v. Stecher, 484 A.2d 755, 757 (Pa. 1984); Taylor v. Pennsylvania Board of Probation and Parole, 569 A.2d 368, 371 (Pa. Commw. Ct. 1989). Thus, CAB may take official notice of these documents just as courts take judicial notice of similar matters. 1 Pa. Code § 35.173.

¹ The record as certified by the Department contains only the original charter application, the transcript of the application hearing before the department and the department's decision on the application.

Item #2, the time stamp receipt, existed before this charter application was filed. Similarly, the Affidavits (Items #1 and #6) aver to facts that also pre-date the application. In determining whether evidence was previously unavailable, CAB must determine whether the facts were previously unavailable, not whether the document containing the facts was previously unavailable. See, Pocono Mountain Charter School, Inc. v. Pocono Mountain School District, 88 A.3d 275, 292 (Pa. Commw. Ct. 2014). Therefore, even though the Affidavits were previously unavailable, the facts contained therein were not. To the extent that the averments concern the events after the hearing, that information is also contained in Items #3 and #4 which have been admitted into evidence. These documents are not information that was previously unavailable; nor are they documents that are a necessary part of the record in this appeal. Thus, the Motion to Supplement is denied regarding Items #1, #2 and #6.³

Based upon the above, the Department's Motion in Limine is DENIED; and Insight's Motion to Supplement is GRANTED in part and DENIED in part. Items #3 and #4 will be admitted and included in the certified record of this appeal. Items #1, #2, #5 and #6 will be excluded and stricken from the record.

On behalf of the State Charter School Appeal Board


Ernest N. Helling, Counsel

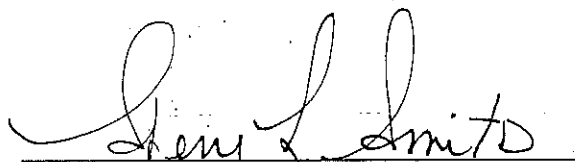
Date: May 6, 2015

² Because of the policy of the Department upon which I need not comment herein, this information was not included in the record certified to CAB; nor was it allegedly considered by the Department in making its decision.

³ Item #6, the Bryant Affidavit, was not put forward until the May 5, 2015 argument as it was developed in response to a footnote in the Department's Response to the Motion to Supplement.

VERIFICATION OF SHERRI L. SMITH

I, Sherri L. Smith, hereby state, subject to the penalties of 18 Pa.C.S. § 4904, that I am the Director of the Bureau of School Support of the Pennsylvania Department of Education and I have read the foregoing Motion for Summary Judgment and the facts set forth therein are true and correct to the best of my knowledge, information, and belief.

A handwritten signature in cursive script, appearing to read "Sherri L. Smith", is written over a horizontal line.

Sherri L. Smith
Bureau of School Support

Dated:

1/29/19

COMMONWEALTH OF PENNSYLVANIA
STATE CHARTER SCHOOL APPEAL BOARD

PROPEL CHARTER SCHOOLS,

Petitioners,

v.

PENNSYLVANIA DEPARTMENT OF
EDUCATION,

Respondent.

:
:
:
: CAB Docket No. 2018-06
:
:
:
:

CERTIFICATE OF SERVICE

I, Wallace Rejrat, hereby certify that I have on this 29th day of January, 2019, served copies of the foregoing Motion to Supplement the Record upon all parties in this proceeding in accordance with the Hearing Officer's January 7, 2019 Order and 1 Pa. Code, Ch. 35, by the method(s) indicated below:

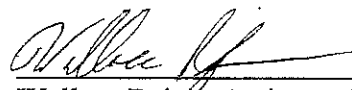
Via E-Mail and Hand Delivery

Susan Hosler, Docket Clerk
State Charter School Appeal Board
Pennsylvania Department of Education
333 Market Street, 9th Floor
Harrisburg, PA 17126-0333
shosler@pa.gov

Via E-Mail and US First-Class Mail

Alan T. Shuckrow, Esq.
Kathryn L. Clark, Esq.
Strassburger McKenna Gutnick & Gefsky
Four Gateway Center, Suite 2200
444 Liberty Avenue
Pittsburgh, PA 15222
ashuckrow@smgglaw.com
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Sandra W. Stoner, Esq.
Hearing Officer
P.O. Box 126237
Harrisburg, PA 17112
swstoner@verizon.net



Wallace Rejrat, Assistant Counsel
I.D. No. 314058
Pennsylvania Department of Education
Office of Chief Counsel
333 Market Street, 9th Floor
Harrisburg, PA 17126-0333

COMMONWEALTH OF PENNSYLVANIA
STATE CHARTER SCHOOL APPEAL BOARD

PROPEL CHARTER SCHOOLS,

Petitioner,

v.

PENNSYLVANIA DEPARTMENT OF
EDUCATION,

Respondent.

CAB Docket No. 2018-06

ORDER

NOW, this ____ day of _____, 2019, upon consideration of the Motion to Supplement the Record filed by Respondent, Pennsylvania Department of Education, the Motion is GRANTED, and the *Charter Schools Meeting Multiple Charter School Organization Eligibility Criteria - 24 P.S. § 17-1729.1-A* list shall be made part of the record in this matter.



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

January 29, 2019

Via E-Mail and Hand Delivery

Susan Hosler, Docket Clerk
State Charter School Appeal Board
Pennsylvania Department of Education
333 Market Street, 9th Floor
Harrisburg, PA 17126-0333
shosler@pa.gov

RECEIVED

JAN 29 2019

PDE Office of Chief Counsel

**Re: *Propel Charter Schools v. Pennsylvania Department of Education,*
CAB Docket No. 2018-06**

Dear Ms. Hosler:

On behalf of Respondent, Pennsylvania Department of Education, enclosed for filing please find one original and one copy of the following: Motion to Supplement the Record; and, Motion for Summary Judgment with Memorandum of Law in Support.

Feel free to contact my office should you have any questions. Thank you.

Sincerely,

Wallace Rejrat
Assistant Counsel

Enclosure

cc: Sandra W. Stoner, Hearing Officer (via Electronic and First-Class Mail w/enclosure)
Alan T. Shuckrow, Esq. (via Electronic and First-Class Mail w/enclosure)
Kathryn L. Clark, Esq. (via Electronic and First-Class Mail w/enclosure)

Exhibit "B"

COMMONWEALTH OF PENNSYLVANIA
STATE CHARTER SCHOOL APPEAL BOARD

RECEIVED

FEB 20 2020

PROPEL CHARTER SCHOOLS,
Petitioners,

PDE Office of Chief Counsel

v.

CAB Docket No. 2018-06

PENNSYLVANIA DEPARTMENT OF
EDUCATION,
Respondent.

JOINT STIPULATIONS

Petitioners, Propel Charter Schools¹ (Propel), and Respondent, the Pennsylvania Department of Education (PDE), by and through their undersigned counsel, submit these joint stipulations of facts and exhibits in the above-captioned matter.

By stipulating to the following facts and exhibits, no party agrees that any fact, individually or collectively with any other fact, is relevant or material. The parties agree, however: (1) that the State Charter School Appeal Board shall determine the relevancy or materiality of any stipulated fact or exhibit; and (2) that no party shall be limited in presenting any relevant, competent evidence desired on the basis that these stipulations have been entered into; provided, however, that the parties represent that they will in good faith endeavor not to present evidence that is duplicative of any exhibit that is stipulated herein. The parties further agree that the documents identified herein are true and correct copies of the documents so identified for authenticity purposes, and that no further testimony is needed to authenticate these documents.

¹ The Petitioners are Propel Schools (operating as Propel Charter School-Homestead), Propel Charter School-East, Propel Charter School-McKeesport, Propel Charter School-Montour, Propel Charter School-Sunrise (operating as Propel Charter School-Braddock Hills), Propel Charter School-Northside, Propel Charter School-Pitcairn, and Propel Charter School-Hazelwood. The Petitioners are collectively referred to as "Propel Charter Schools."

STIPULATED FACT

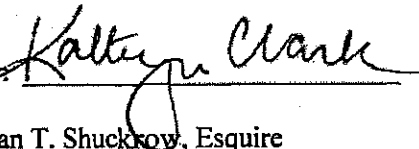
1. Propel Charter School - McKeesport's 2018-2019 Act 82 Building-level Performance Profile (formerly known as the School Performance Profile or SPP) Score of 78.4.

STIPULATED EXHIBIT

1. Charter Schools Meeting Multiple Charter School Organization Eligibility Criteria - 24 P.S. § 17-1729.1-A (MCSO Eligibility List), containing 2017-2018 and 2018-2019 data. A copy of the MCSO Eligibility List is attached hereto as Exhibit "A". (2 pages)

WHEREFORE, the parties jointly ask that these Stipulations be admitted into the record along with the exhibits referenced herein and attached hereto.

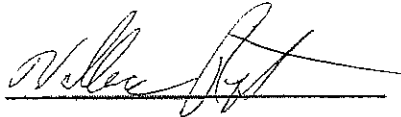
Respectfully submitted,

By: 

Alan T. Shuckrow, Esquire
PA Attorney ID # 74586
Kathryn L. Clark, Esquire
PA Attorney ID # 80201

Strassburger McKenna Gutnick & Gefsky
444 Liberty Avenue, Suite 2200
Pittsburgh, PA 15222

Counsel for Propel Charter Schools

By: 

Wallace Rejrat, Assistant Counsel
PA Attorney ID # 314058

Pennsylvania Department of Education
Office of Chief Counsel
333 Market Street, 9th Floor
Harrisburg, PA 17126
Tel.: (717) 787-5500
Fax: (717) 783-0347

*Counsel for Pennsylvania Department of
Education*

EXHIBIT A

Charter Schools Meeting Multiple Charter School Organization Eligibility Criteria – 24 P.S. § 17-1729.1-A

School	SPP Score – 2018	SPP Score – 2019
Avon Grove CS	74.2	78.3
Bear Creek Community CS	66.3	69.2
Bucks County Montessori CS	91	81.6
Capital Area School for the Arts Charter School	89.2	87.9
Centre Learning Community CS	66.4	69.8
Christopher Columbus CS	77.2	67.9
Circle of Seasons Charter School	72.4	76.3
Environmental Charter School at Frick Park	67.9	74.3
Evergreen Community CS	80.4	76.5
Fell CS	72.9	71.3
Folk Arts-Cultural Treasures CS	73.7	74.4
Franklin Towne Charter Elementary School	83.1	78.8
Franklin Towne CHS	95.7	96.1
Independence CS	70.7	68.8
Infinity CS	78	78.8
Keystone Academy Charter School	69.6	73.4
Lehigh Valley Academy Regional CS	90.4	68.6
Lehigh Valley Charter High School for the Arts	81.4	84.2
Lincoln Park Performing Arts CS	76.9	75.7

MaSI Community CS II	78.7	74.1
Mathematics Science & Technology Community CS	73.4	84.7
Multicultural Academy CS	77.5	69.4
Renaissance Academy Charter School	79.9	77.5
Seven Generations Charter School	67.1	72.9
Souderton CS Collaborative	70.5	86.2
Vida Charter School	74.7	69.7
Vision Academy Charter School	69.9	74.7

Eligibility determined as follows:

- Identify top quartile among all brick-and-mortar (including regional) charters that had SPP scores in 2017-18;
- Identify top quartile among all brick-and-mortar (including regional) charters that had SPP scores in 2018-19;
- Identify schools that appear on **both** above lists; and
- Remove any schools that have closed.



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

February 20, 2020

Via E-Mail and Hand Delivery

Susan Hosler, Docket Clerk
State Charter School Appeal Board
Pennsylvania Department of Education
333 Market Street, 9th Floor
Harrisburg, PA 17126-0333
shosler@pa.gov

RECEIVED

FEB 20 2020

PDE Office of Chief Counsel

Re: *Propel Charter Schools v. Pennsylvania Department of Education*,
CAB Docket No. 2018-06

Dear Ms. Hosler:

On behalf of the parties, enclosed for filing in the above-captioned matter please find one original and one copy of the parties' Joint Stipulations related to the pending motions seeking to supplement the record.

Feel free to contact us should you have any questions. Thank you.

Sincerely,

Wallace Rejrat
Assistant Counsel

Enclosure

cc: Alan T. Shuckrow, Esq. (via E-Mail and First-Class Mail w/enclosure)
Kathryn L. Clark, Esq. (via E-Mail and First-Class Mail w/enclosure)

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

PROPEL CHARTER SCHOOLS,	:	
Appellant	:	Docket No. CAB 2018-06
	:	
v.	:	
	:	Appeal from June 20, 2018 Notice
PENNSYLVANIA DEPARTMENT OF	:	of Denial of Application for
EDUCATION,	:	Multiple Charter School
Appellee	:	Organization

ORDER

AND NOW, this 22nd day of December, 2020, based upon the foregoing and in accordance with the vote of this Board at its meeting June 18, 2019, it is hereby **ORDERED** that Propel Charter Schools' appeal of the Hearing Officer's March 19, 2019 Memorandum Order granting the Pennsylvania Department of Education's Motion to Supplement the Record is **DENIED**.¹³

It is further **ORDERED** that the appeal of Propel Charter Schools from the denial by the Pennsylvania Department of Education of its Application to operate a Multiple Charter School Organization is hereby **DENIED**.¹⁴

¹³ At its June 18, 2019 meeting, the Charter School Appeal Board voted unanimously to deny Propel Charter School's appeal of the Hearing Officer's Order granting the Motion to Supplement with Board members Yanyanin, Scott, Peri, and Cook voting to deny.

¹⁴ At its June 18, 2019 meeting, the Charter School Appeal Board voted to deny Propel Charter School's appeal from the denial of its MCSO Application by the Pennsylvania Department of Education with Board members Yanyanin, Scott, and Peri voting to deny and Cook voting to grant. Board Chair Rivera and Vice Chair Munger recused. CAB did not immediately thereafter issue a written decision denying the appeal in accord with Section 17-1729.1-A(f)(iii) of the CSL because a 3 to 1 vote was considered to be nonactionable based upon CAB's interpretation of the voting provision contained Section 17-1721A(a) of the CSL. A November 20, 2020 Commonwealth Court ruling in the matter of Propel Charter Schools v. Pennsylvania Dept. of Ed. and State Charter Appeal Board, Docket No. 1826 CD 2019, concluded that the 3-1 vote of CAB was proper. CAB now issues its Order in support of its June 18, 2019 vote of 3 – 1 to deny Propel Charter School's appeal.

For the State Charter School Appeal Board



Noe Ortega
Acting Secretary of Education and Chair

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Harrisburg, PA 17126

Alan T. Shuckrow, Esquire
Strassburger, McKenna Gutnik & Gefsky
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Susan Hosler, Docket Clerk
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333 Market Street, 9th Floor
Harrisburg, PA 17126-0333

Date Mailed: December 23, 2020