

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

<b>Executive Education Cyber</b>	:	
<b>Charter School,</b>	:	
<b>Appellant</b>	:	
	:	<b>CAB Docket No. 2021-06</b>
<b>v.</b>	:	
	:	
<b>Pennsylvania Department of Education,</b>	:	
<b>Appellee</b>	:	

**OPINION**

In accordance with the Charter School Law<sup>1</sup> (“CSL”), this matter comes before the Pennsylvania State Charter School Appeal Board (“Appeal Board” or “CAB”) on the appeal by Executive Education Cyber Charter School (“EECCS”) from a June 10, 2021, decision of the Pennsylvania Department of Education (“Department”) denying EECCS’s April 13, 2021, revised application (“Revised Application”) for a charter to open a cyber charter school in Pennsylvania.<sup>2</sup>

**BACKGROUND AND PROCEDURAL HISTORY**

On September 22, 2020, EECCS submitted an application to establish a cyber charter school (“Application”). Certified Record (“CR”), Items 7.c. and 25.c., EECCS’s Original Application. On October 3, 2020, the Department provided notice of a public hearing held on November 12, 2020, (“November 12, 2020, Hearing”). The public hearing was conducted on the Application via video on November 12, 2020. The public hearing consisted of testimony from EECCS’s representatives in response to questions asked by the Department staff to confirm their

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<sup>1</sup> Act of June 19, 1997, (P.L. 225, No. 22), *as amended*, 24 P.S. §§ 17-1701-A – 17-1751-A.

<sup>2</sup>This appeal involves a Cyber Charter School and a decision rendered by the Department, therefore, the Secretary, as agency head, is not able to vote upon matters involving the Department. The CSL expressly provides that the Secretary must be recused from voting on such appeals. 24 P.S. § 729.I-A(f)(3). As required, the Secretary did not participate in any deliberation or vote in this appeal matter.

understanding of EECCS’s proposal to operate a cyber charter school. Subsequently, on January 28, 2021, the Department denied the application based on deficiencies for each of the five statutory criteria enumerated in the CSL. (*See* CR, Items 7.b. and 25.b., Executive Education Transcript of Hearing; *see also* CR, Items 7.e. and 25.d., Executive Education’s Application Decision).

EECCS’s March 24, 2021, Revised Application was received by the Department on April 13, 2021. (*See* CR, Items 7.g. and 25.e, Revised Application at R.1198a). On June 10, 2021, the Department issued its decision to deny EECCS’s Revised Application (“June 10 Denial”). (*See* CR, Items 7.h. and 25.f., EECCS’s Revised Application Decision). On July 12, 2021, EECCS filed a Letter of Appeal (“Appeal” or “Appeal Letter”) of the Department’s denial initiating the instant matter. On July 29, 2021, the Department filed an answer to the Appeal. (*See* CR, Item 5).

On June 24, 2022, an Order Establishing Filing Deadlines was issued. An Amended Order Establishing Filing Deadlines for Briefs was issued on July 29, 2022, setting a September 30, 2022, deadline for EECCS to file its brief on the merits, including findings of fact and conclusions of law. Upon agreement of the parties, an order was issued on November 1, 2022, Establishing New Filing Deadlines for Briefs, setting the deadline for EECCS to submit its brief on the merits for March 31, 2023. EECCS timely submitted its Brief in support of its appeal on March 28, 2023. The parties concurred to extend the filing of the Department’s reply brief on two occasions, with the second extension setting the filing deadline for June 15, 2023. The Department’s reply Brief and Proposed Findings of Fact and Conclusions of Law were timely filed on June 15, 2023.

The Appeal Board heard oral argument from both parties on February 13, 2024. The Appeal Board deliberated on this matter during its April 9, 2024, and May 14, 2024, meetings.

## **FINDINGS OF FACT**

### **Procedural History**

1. On October 1, 2020, EECCS timely submitted an application to establish a cyber charter school (“Application”). (CR, Item 7.c., EECCS Original Application).
2. On November 12, 2020, the Department held a public hearing following public notice of such hearing. (CR, Items 7.a., Notice, and 7.b., EECCS Transcript of Hearing).
3. On January 28, 2021, the Department issued a written denial of the Application. (CR, Item 7.e., EECCS Application Decision).
4. On April 13, 2021, EECCS filed a revised application (“Revised Application”). (CR, Item 7.f., Revised Application).
5. On June 10, 2021, the Department issued a written denial of the Revised Application citing to numerous deficiencies under the CSL, Section 1745-A(f)(1), 24 P.S. § 17-1745-A(f)(1), and Section 1719-A of the CSL, 24 P.S. § 17-1719-A, and regulations at 22 Pa. Code Ch. 4 (relating to academic standards and assessment) or subsequent regulations promulgated to replace 22 Pa. Code Ch. 4. (CR, Item 7.h., EECCS Revised Application Decision).
6. On July 12, 2021, EECCS filed an appeal (“Appeal”) of the June 10, 2021, Denial initiating the above-captioned matter. (CR, Item 2).
7. On July 29, 2021, the Department filed its Answer to the Appeal. (CR, Item 5).
8. An Order Establishing Filing Deadlines for Briefs was filed on June 24, 2022. (CR, Item 14).
9. An Amended Order Establishing Filing Deadlines for Briefs was filed on August 1, 2022, setting a September 30, 2022, deadline for EECCS to file its brief on the merits, including findings of fact and conclusions of law. (CR, Item 15).

10. Upon agreement of the parties, an order was issued on November 1, 2022, Establishing New Filing Deadlines for Briefs, setting the deadline for EECCS to submit its brief on the merits for March 31, 2023. (CR, Item 20).
11. EECCS timely submitted its Brief in support of its appeal on March 28, 2023. (CR, Item 21).<sup>3</sup>
12. The parties concurred to extend the filing of the Department’s reply brief on two occasions, with the second extension setting the filing deadline for June 1, 2023, which was extended to June 15, 2023. (CR, Items 28, 29).
13. The Department’s reply Brief and Proposed Findings of Fact and Conclusions of Law were timely filed on June 15, 2023. (CR, Item 30).
14. On September 15, 2023, the record was certified by the undersigned to the Appeal Board. (CAB Docket No. 2021-06).
15. The Appeal Board heard oral argument from both parties on February 13, 2024. (CAB Docket No. 2021-06).
16. The Appeal Board deliberated this matter during its April 9, 2024, and May 14, 2024, meetings. (CAB Docket No. 2021-06).
17. On April 9, 2024, CAB rendered a tie vote, and the matter was tabled until CAB’s next regularly scheduled meeting,<sup>4</sup> but on May 14, 2024, CAB voted<sup>5</sup> to deny the appeal, with

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<sup>3</sup> EECCS timely filed its brief on March 28, 2023, however, the brief was incorrectly titled “Petition for Appeal.” (CR, Item 21).

<sup>4</sup> On April 9, 2024, CAB rendered a tie vote of 3 to 3. Members Liddle, Kennedy, and Alexander voted to deny the appeal and Members Faustman, Killion, and Aichele voted to grant. Member Mumin was recused from all deliberation and voting. The matter was tabled for further deliberation at CAB’s next regularly scheduled meeting.

<sup>5</sup> On May 14, 2024, the Department’s decision to deny the Charter School’s appeal was affirmed by a vote of 4 to 2 with Members Faustman, Liddle, Kennedy, and Alexander voting to deny the appeal. Members Killion and Aichele voted to grant. Member Mumin was recused from deliberation and voting.

the Secretary of Education recusing because the matter involved an appeal from a decision of the Department of Education, itself. (CAB Docket No. 2021-06).

**Governance/Facility/Learning Experience**

18. EECCS's facility will be located at 555 Union Boulevard, Allentown, Pennsylvania 18109 (the "Facility"), with a letter of intent with the landlord and available leasing space starting at 20,000 square feet, to grow up to 40,000 square feet within five years. (CR 25, R.<sup>6</sup> 32a-33a).
19. The Facility does not need any renovations and can easily provide the necessary space for EECCS. (CR 25, R. 33a).
20. The Bylaws for EECCS have been approved. (CR 25, R. 33a).
21. Trustees for EECCS have been appointed. (CR 25, R. 33a).
22. EECCS is in the process of being approved as a non-profit under 501(c)(3) and is awaiting approval from the Commonwealth of Pennsylvania. (CR 25, R. 33a).
23. EECCS intends to comply with all state and federal special education laws. (CR 25, R.33a).
24. Once approved as a cyber charter school, EECCS will hire a financial controller to ensure that EECCS complies with all government accounting principles and will engage Gorman & Associates, P.C. to provide financial oversight and compliance. (CR 25, R. 33a).
25. EECCS will also consult with Dr. Selma Abi-Daher regarding finances and will partner with Charter Choices, Inc., an independent educational consulting firm, to provide feedback regarding EECCS's finances. (CR 25, R. 33a).

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<sup>6</sup> R. refers to the record attached to EECCS's application.

26. EECCS intends to differentiate its instruction using 21<sup>st</sup> Century technology, utilizing asynchronous, and synchronous learning to determine the student's level, need, and support. (CR 25, R. 34a).

### **Financial: Budgetary Assumptions Regarding Per-Pupil Rates**

27. Local revenues for charter schools are based on per-pupil rates from students' resident school districts in Pennsylvania. (CR 7 and 25).

28. EECCS's proposed budget included a budget line item for Local Per-Pupil Funding and used average per-pupil base rates of \$12,963 for regular education students and \$28,721 for special education students. (CR 7 and 25).

29. To calculate estimated revenues from this source, EECCS's budget indicated a "projected annual per-pupil growth factor" of 1.00 percent would be applied in FY 2022. (CR 7 and 25, R. 049713a).

30. When multiplying per-pupil base rates by EECCS's enrollment projections and accounting for the "projected annual per-pupil growth factor," the results do not equal the revenue totals provided in EECCS's preliminary budget. (CR 7 and 25, R.49716a).

31. When not accounting for the "projected annual per-pupil growth factor," EECCS's calculated results still differ from figures provided by EECCS in its budget. (CR 7 and 25).

### **Federal Revenues**

32. The information provided by EECCS regarding how federal revenues were calculated was incomplete. (CR 7 and 25).

33. While EECCS identified assumptions underlying federal revenue estimates, it does not validate eligibility for certain federal programs and certain calculations related to federal revenues appear to be incorrect. (CR 7 and 25).

### **Free and Reduced Price Lunch**

34. EECCS budgeted \$182,000 in fiscal year 2022 for Free and Reduced Price Lunch revenues by assuming that: (1) Fifty four percent of students will be eligible for the Free and Reduced Price Lunch program; and (2) revenues received will be at a rate of \$700 per student. (CR 7 and 25).
35. Based on EECCS's enrollment estimate of 260 students, resulting revenues would only be \$98,280, significantly less than the \$182,000 included in the budget. (CR 7 and 25, R. 001202a, R. 049713a).

### **General Budget Projections and Assumptions**

36. The Revised Application referenced a "budget target percentage" for compensation and notes that averages in the Lehigh Valley, as well as statewide, will be considered when determining this percentage. (CR 7 and 25, R. 001285a).
37. During the November 12, 2020, Hearing, EECCS did not provide a meaningful response to the question of what the budget target percentage is and how it will be set. (CR 7 and 25, R. 000102a).
38. The revised application does not explain the inconsistencies between the budgeted expenses related to insurance and the rate quote. (CR 7).
39. The Department could not confirm that these assumptions in this regard are reasonable. (CR 7).

### **Salary and Start-Up Costs**

40. EECCS neglected to include the full cost of all expenditures in the budget and presented conflicting or incomplete information. (CR 7.f. and 25).

41. EECCS's budget did not include salary costs for certain positions included in EECCS's staffing plan; EECCS did not include employee salaries and anticipated salary costs for Assistant Principal(s) and Data Specialist(s) for each fiscal year from 2022-2026. (CR 7.f. and 25, R. 049715a).
42. Budget irregularities include a term sheet for a line of credit (LOC) to cover "start-up" costs.<sup>7</sup> (CR 7.f. and 25, R. 049784a).

### **Essential Hardware and Software for Cyber School Students**

43. EECCS's budget did not account for proposed hardware and software for students. (CR 7.f. and 25).
44. The Revised Application is unclear whether the budget accounts for any consumables and internet subsidies - including hotspots and other necessary equipment for a cyber school. (CR 7.f. and 25).
45. The Revised Application references the anticipated provision of Internet subsidies, but no internet subsidy schedule was provided; nor is there any indication of the amount or frequency of payments. (CR 7.f. and 25).
46. While the Technology Support section of the Revised Application addresses the planned refresh cycle and plans regarding repair and replacement for equipment, the budget does not adequately account for such costs. (CR 7.f. and 25, R. 001244a – 001248a.).

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<sup>7</sup> Notably, the less-than-ideal repayment terms of this financial product would require interest only monthly payments with the principal being repaid by the borrower on the lender's demand. In addition, the term sheet provides no identifying information on the lender which prevents inquiry as to the lender's standing or potential conflicts. The budget provides no clarity on what, if any, start-up costs are budgeted for, nor whether the line of credit is sufficient to cover those costs. (CR 7.h. at Revised Application, Exhibit K).



### **Long-Term Organizational Viability**

47. The proposed budget includes an operating surplus in each year; however, fund balances generated by the surpluses fall short of the Government Finance Officer Association's recommended levels by between \$200,000 and nearly \$700,000 in any given year for the first five years of operation.<sup>8</sup> (CR 7 and 25).
48. EECCS's Revised application does not adequately plan for budget contingencies in the event actual revenues are less than projected. (CR 7 and 25, R. 049787).

### **K-12 Curriculum**

49. The CSL requires an applicant to submit a complete detailing of its curriculum—in other words, the objectives to be attained, the content and instructional time devoted to attaining the standard, the alignment of the course with Pennsylvania standards, and procedures for assessment—for each academic content area set forth in Chapter 4 as part of the application. (*See*, 24 P.S. § 17-1719-A (5) and 17-1747A (1) and 22 Pa. Code Ch.4).
50. The content areas set forth in Chapter 4, includes: English language arts; mathematics; science and technology; environment and ecology; social studies; arts and humanities; career education and work; health, safety, and physical education; and family and consumer science. (22 Pa. Code § 4.11(g)).
51. EECCS will offer a program that is inquiry driven, with teachers acting as facilitators and having students find the information themselves rather than reiterating information told to them. (CR 7.f. and 25, R. 34a).

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<sup>8</sup> The Government Finance Officer Association (GFOA) recommends that, at a minimum, entities maintain unrestricted budgetary general fund balances of no less than two months of regular general fund operating fund operating revenues or expenditures. (CR 7 and 25).

52. The academics of EECCS will be rigorous, utilizing the Amplify Core Knowledge Language Arts (CKLA) core curriculum for kindergarten through fifth grade. (CR 7.f. and 25, R. 34a).
53. EECCS will add extra contents for science in grades three through five to support its rigorous program and will utilize the McGraw Hill math curriculum to develop critical thinking skills. (CR 7.f. and 25, R. 34a-35a).
54. For middle school and high school students, EECCS will use the Apex learning curriculum, which provides a high level of rigor aligned with standards set forth by the Commonwealth of Pennsylvania. (CR 7.f. and 25, R. 35a).
55. The information provided from third party vendors did not demonstrate a clear curriculum or planned instruction for all proposed grades and courses. (CR 7 and 25, R. 1309a-49085a).
56. Teachers will use varying manners to deliver instruction, which include differentiating instruction, personalized learning approach, scaffolding, collaborative learning, project-based learning, and challenge-based question learning, as well as flipping the classroom and gamification. (CR 7 and 25, R. 1226a-1228a).
57. In certain circumstances, instruction may be delivered through artificial intelligence or virtual reality programs. (CR 7 and 25, R. 1226a).
58. The Revised Application relies heavily on vendor content and provides no evidence of independent verification by EECCS. (*See* Section 1747-A(1)).
59. The elements of planned instruction were not provided for each required academic content area, including alignment to standards. (CR 7.f. and 25).

60. While a voluminous amount of information was provided, in many instances the information consisted of grade-level content or pacing guidelines, which does not equate to curriculum. (CR 7.f. and 25).
61. Specific to its proposed elementary curriculum, EECCS provided grade-level content and pacing guidelines in ELA and math but did not provide curriculum. (CR 7.f. and 25).
62. EECCS provided no evidence of planned curriculum for either health, safety and physical education, or arts and humanities at the elementary level. (CR 7.f. and 25).
63. At the middle and high school levels, EECCS provided course content, but no curriculum for science and technology and environment and ecology. (CR 7.f. and 25).
64. EECCS provided no evidence of a high school curriculum for health, safety and physical education, arts and humanities, career education and work, or family and consumer science. (See generally CR 7.f. and 25, Revised Application).
65. EECCS encourages cooperative learning opportunities through its extracurricular activities, planning, and collaboration with community partners, such as Future Business Leaders of America, Lehigh Valley Chamber of Commerce, and Career Link, to ensure the success of its youth development programs. (CR 7.f. and 25, R. 1242a-1244a).
66. EECCS has explained the technology, equipment, and other materials to be provided by EECCS to its students, including the delivery of its curriculum through its LMS, Blackboard Unite, and Apex Learning. (CR 7.f. and 25, R. at 1244a-1248a).
67. Technology support will be available to all students, including a full-time technical support staff to process technical issues. (CR 7.f. and 25, R. at 1244a-1248a).

68. Hardware provided to all students includes a HP Stream Pro 11 computer, HotSpot, printer, and headphones/mic; software provided includes Microsoft Windows 10, Microsoft Office, anti-virus software, and VPN software. (CR 7.f. and 25, R. 1247a-1248a).
69. To ensure the privacy of all of its students, EECCS requires the consent of any parent/guardian before disclosing personally identifiable information to anyone not entitled to see it under the law. (CR 7.f. and 25, R. 49740a).
70. EECCS has also devised a system of commercially prepared standardized achievement tests to be used in addition to the Pennsylvania System of School Assessment test. (CR 7.f. and 25).
71. These systems include Classroom Diagnostic Tools, the Dynamic Indicators of Basic Early Literacy Skills (“DIBELS”) assessments, the analysis of STAR data, daily classroom assessments, and unit classroom assessments. (CR 7.f. and 25, R. 1237a-1238a).
72. To ensure that each student meets all attendance requirements, EECCS will monitor a student's school day, including the delineation of on-line and off-line times. This is achieved by requiring students to log into Responsive Group Guidance, so their attendance can be recorded each day. (CR 7.f. and 25).
73. Each parent/guardian will be held accountable for the attendance of his/her child-student. (CR 7.f. and 25, R. 1179a).
74. EECCS has determined its projected student enrollment for years one through five, which ranges from 260 students in the first year to 660 students in the fifth year. (CR 7.f. and 25, R. 1202a).
75. EECCS anticipates a student/teacher ratio of 1:12 in the first year, eventually transitioning to a 1:10 ratio beginning in year three and onward. (CR 7.f. and 25, R. 1202a).

76. EECCS has established a plan to ensure academic integrity by setting strict guidelines as to what constitutes academic dishonesty. Students will be constantly monitored for any academic dishonesty. (CR 7.f. and 25, R. 49751a).

### **Staffing And Professional Development Plans**

77. EECCS's Revised Application does not sufficiently detail the staff and educator positions, nor does it provide unequivocal statements on staff estimates to student/teacher ratios. (CR 7.f. and 25).

78. Information on the Professional Development Plan does not meet Act 48 requirements for ongoing staff professional development. (CR 7.f. and 25).

79. While the EECCS's Revised Application provides information about potential candidates for teaching positions, it does not provide any information about the teaching positions for which the teachers may be employed. (CR 7.f. and 25).

80. EECCS's Revised Application provides conflicting evidence with regards to its student/teacher ratio. (CR 7.f. and 25).

81. EECCS provides an estimate of seventeen positions for teachers/learning facilitators and three positions for special education teachers. (CR 7.f. and 25, Revised Application, p. 69, 71).

82. EECCS does not indicate how these proposed staffing levels match enrollment projections while increasing estimates for other "staff." (CR 7.f. and 25, Revised Application, pp. 86-87).

83. The Application does not include a final teacher induction plan. (CR 7.f. and 25, Revised Application, p. 87).

### **Vulnerable Student Populations**

84. EECCS's Application addresses special education programs as follows:

- a. In the event a parent/guardian believes a student may qualify for special education, the parent/guardian may initiate testing procedures by making a request to the school, at most 60 days after which the school will begin the testing process. (CR 7.f., R. 49752a).
  - b. After testing is completed and a report prepared, there will be a meeting to discuss the results and goals will be set considering the testing results and discussion between the school and the student's parent/guardian. (CR 7.f., R. 49752a).
  - c. Any special education programs will be specifically tailored to the needs of the student. (CR 7.f., R. 49752a).
  - d. EECCS recognizes that communication between the parties is vital; consequently, EECCS encourages any parent/guardian to communicate any questions and concerns with the school. (CR 7.f., R. 49739a).
  - e. EECCS will communicate with parents/guardians using the following methods: (1) scheduled parent/teacher conferences; (2) progress reports for students doing unsatisfactory work; (3) report cards (four times a year); (4) interim reports; (5) monthly newsletters; and (6) the Parent Portal. (CR 7.f., R. 49739a-49740a).
  - f. EECCS will also communicate using notes or telephone calls, home and school meetings, and/or email, text, and other means of communication. (CR 7.f., R. 49740a).
  - g. Any parent/guardian may request a meeting at any time. (CR 7.f., R. 49740a).
85. EECCS did not discuss in its Revised Application how English learners will be served in terms of instruction models, staffing, or the process by which their program will be regularly evaluated and adjusted to ensure that English learners are overcoming language

barriers or any plan for implementation of bilingual instruction across grades. (CR 7.f. and 25, R. 53a – R. 55a).

### **Community Support**

86. EECCS provided letters of support from multiple individuals, including Pennsylvania State Senator Pat Browne, Executive Director of the Workforce Board of the Lehigh Valley Nancy Dischinat, Senior Vice President of QNB Bank Sharon Michael, owner of Wall2Wall Pest Control Chuck Rockmore, and Lenny McAllister of the Pennsylvania Coalition of Public Charter Schools. (CR 7.f. and 25, R. 35a).
87. In its Revised Application, EECCS has included letters and petition signatures demonstrating community support (CR 7.f. and 25, R. 1055a-1091a; R. 49103a-49200a), support from parents (CR 7.f. and 25, R. 49204a-49372a), and a list of museums, community organizations, businesses, charter schools, politicians and political groups, religious organizations (CR 25, R1082a), and universities (CR 7.f. and 25, R. 1253a-1256a).
88. Specifically, the founding coalition of EECCS includes five educators and five founding members that are parents (R. 1201a-1202a), and the educator members were not reflected in the narrative description of the Founding Coalition (R. 001256a-001264a).
89. EECCS has provided a petition with names of hundreds of individuals supporting the approval of EECCS as a cyber charter school. (CR 7.f. and 25, R. 1092a-1131a; 49373a-49423a).
90. EECCS has provided submissions from individuals requesting approval of EECCS as a cyber charter school, many of which seek to enroll their children at EECCS. (CR 7.f. and 25, R. 49204a-49372a).

91. EECCS has taken steps for community outreach, including starting a billboard campaign, and organizing a Halloween parade, a Thanksgiving food drive, a Christmas toy drive, and Three Kings holiday celebration. (CR 7.f. and 25, R. 36a).
92. Additional efforts to foster significant community support have been hindered by the Covid-19 pandemic. (CR 7.f. and 25, R. 36a).
93. EECCS proposes to ensure parental engagement in monthly board meetings by following the Pennsylvania Sunshine Act and posting all board meetings online ensuring that parents are aware of any upcoming board meetings. Parents can also submit any comments for any board meetings. (CR 7.f. and 25).
94. Once the school is up and running, EECCS intends to solicit a parent to be a member of the board and be a voice and representative of all parents and parent organizations. (CR 7.f. and 25, R. 36a-37a).
95. EECCS had a pre-enrollment of 96 students at the time of the hearing. (CR 25, R. 35a).

#### **Serving as a Model for Other Public Schools**

96. The vision of EECCS is that it "will become a leader amongst innovative cyber charter schools by providing students with [an] individualized school experience that focuses on students becoming facilitators of their own learning." (CR 7.f. and 25, R. 1204a).
97. In support of its vision, EECCS has demonstrated its intent to serve as a model for other schools, including public schools, through the use of varying manners to deliver instruction, which include differentiating instruction, personalized learning approach, scaffolding, collaborative learning, project-based learning, and challenge-based question learning, as well as flipping the classroom and gamification. (CR 7.f. and 25, R. 1226a-1228a).



98. In certain circumstances, Executive Education may deliver instruction through artificial intelligence or virtual reality programs. (CR 7.f. and 25, R. 1226a).
99. This delivery of instruction supports its mission:
  - to provide an individualized student-centered learning experience, coupled with a focus on business education supported with rigorous academics, social and emotional learning, and career exploration. This will be paralleled with a student centered, individualize learning experience that is facilitated by an online platform. Students will interact with teachers, specialists, counselors, and their peers through live synchronous classes as well as asynchronous instruction to help them make connections and become successful lifelong learners. (CR 7.f. and 25, R. 153a).
100. EECCS will hire state certified teachers in all content areas, ensuring those teachers utilize best practices so students can become critical thinkers, problem solvers, communicators, and collaborators. (CR 7.f. and 25, R. 152a).
101. EECCS plans to provide a standard-aligned rigorous curriculum with exposure to diverse careers, including those within the realm of business, entrepreneurship, and beyond. (CR 7.f. and 25, R. 152a).
102. EECCS plans to adopt a social-emotional learning piece, designed to instill critical social competencies in students as early as kindergarten. (CR 7.f. and 25, R. 152a).
103. Students in the social-emotional program will be assigned to a class where they will meet daily and discuss topics based on social skills, coping skills, character development, leadership, and other topics that are important to social-emotional learning, with the goal of supporting students' development of soft skills. (CR 7.f. and 25, R. 152a).
104. The program will also develop the necessary resiliency skills children need in order to deal with barriers that they may face in the future. (CR 7.f. and 25, R. 152a).
105. EECCS has also established the following academic and non-academic goals:

- a. Within 5 years of the school's opening, 90% of students will achieve a score of proficient or advanced according to an ELA created rubric on their 21st Century Skills Portfolio;
- b. A minimum of 70% of EECCS's 8th and 12th grade students will receive a proficient score on their culminating project as determined by the performance outcome rubric;
- c. During its first year in operation, a minimum of 65% of students in grades 3-8 will score proficient or advanced on the ELA PSSAs;
- d. A minimum of 50% of students in grades 3-8 will score proficient or advanced on the Math PSSAs within the first year of the opening of the cyber charter school;
- e. Executive Education will aim to achieve parent satisfaction, including 80% parent satisfaction;
- f. Increase enrollment each year by a minimum of 100 students;
- g. A minimum of 70% of students will re-enroll the following year;

(See CR 7.f. and 25, R. 1553a-1555a)

### **CONCLUSIONS OF LAW**

1. CAB has jurisdiction in this matter. Section 1746-A of the CSL, 24 P.S. § 17-1746-A. (Findings of Fact Nos. 1-17).
2. The CSL governs the application process, the approval process, the revocation and renewal of charters, and the operation of charter schools in Pennsylvania. 24 P.S. §§ 17-1701-A, *et seq.*
3. EECCS was given notice and an opportunity to be heard in conformity with the CSL and notions of due process. (Findings of Fact Nos. 1-17).
4. EECCS has the burden of proving that all the enumerated criteria for the contents of the charter school application were satisfied. 24 P.S. § 17-1745-A(f)(1), and Section 1719-A of the CSL, 24 P.S. § 17-1719-A; Section 1717-A(e)(2), 24 P.S. § 17-1717-A(e)(2); *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).
5. A single deficiency in section 1745-A(f)(1), 24 P.S. § 17-1745-A(f)(1) would be grounds to deny the application,

- a. EECCS did not meet its burden to show evidence of sustainable support for the cyber charter school plan by teachers, parents or guardians, and students, under section 1745-A(f)(1)(i) of the CSL. 24 P.S. § 17-1745-A(f)(1)(i). (Finding of Fact Nos. 86-95).
- b. EECCS did not meet its burden to demonstrate, in terms of support and planning, that it is capable to provide comprehensive learning experiences to students under the charter under section 1745-A(f)(1)(ii) of the CSL. 24 P.S. § 17-1745-A(f)(1)(ii). (Findings of Fact 18-26).
- c. EECCS did not meet its burden to demonstrate the extent to which the programs outlined in the application will enable students to meet the academic standards under 22 Pa. Code Ch. 4 (relating to academic standards and assessment) or subsequent regulations promulgated to replace 22 Pa. Code Ch. 4, under section 1745-A(f)(1)(iii) of the CSL. 24 P.S. § 17-1745-A(f)(1)(iii), Section 1719-A of the CSL, 24 P.S. § 17-1719-A, and under Section 1747-A(5) of the CSL, 24 P.S. 1747-A(5). (Finding of Fact No. 18-105).
- d. EECCS did not meet its burden to demonstrate the extent to which the application meets the requirements of section 1747-A, under section 1745-A(f)(1)(iv) of the CSL. 24 P.S. § 17-1745-A(f)(1)(iv). (Findings of Fact Nos. 18-105).
- e. EECCS did not meet its burden to demonstrate the extent to which the cyber charter school may serve as a model for other public schools, under section 1745-A(f)(1)(v) of the CSL. 24 P.S. § 17-1745-A(f)(1)(v). (Findings of fact 96-105)

6. EECCS did not meet its burden of demonstrating that it met the application requirements under Section 1719-A of the CSL, 24 P.S. § 17-1719-A, and the additional standards for cyber schools under section 1747-A, in the following areas:
  - a. The curriculum to be offered and how it meets the requirements of 22 Pa. Code Ch. 4. (relating to academic standards and assessment) or subsequent regulations promulgated to replace 22 Pa. Code Ch. 4. (Section 1747-A(1)). (Findings of Fact Nos. 49-67).
  - b. The curriculum to be offered and the methods of assessing whether students are meeting educational goals. (Section 1719-A(5)). (Findings of Fact 70-71).
  - c. The technical support that will be available to students and parents or guardians. (Section 1747-A(9)). (Findings of Fact 67).
  - d. The proposed faculty and a professional development plan for the faculty of a charter school. (Section 1719-A(13)). (Findings of Fact Nos. 77-78).

## **DISCUSSION**

### **Standard of Review/Burden of Proof**

CAB must apply a *de novo* standard of review when entertaining appeals from a denial of a charter school's application; such review requires CAB to give "appropriate consideration" to the findings of the district board, (or here, the Department) while making an independent determination as to the merits of the charter application. *West Chester Area School District v. Collegium Charter School*, 812 A.2d 1172, 1180 (Pa. 2002). CAB must independently review the record in accordance with the requirements of the CSL. (*Id.*, 812 A.2d at 1179-1180).

The degree of proof required to establish a case before an administrative tribunal is a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). A preponderance of the evidence is the

lowest degree of proof recognized in civil judicial proceedings, *Lansberry, supra*, 578 A.2d at 602, citing *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950), and is generally understood to mean that the evidence demonstrates a fact is more likely to be true than not to be true, or if the burden were viewed as a balance scale, the evidence in support of the proponent's case must weigh slightly more than the opposing evidence. *Se-Ling Hosiery*, 70 A.2d at 856. Accordingly, the record in this matter is reviewed to determine if the evidence which EECCS produced at the hearing meets its burden of proving that its Revised Application satisfies all the requirements enumerated in the CSL at Section 1717-A(e)(2), 24 P.S. § 17-1717-A(e)(2), thus, warranting the grant of the Revised Application.

### **Purpose of the CSL**

Section 1702-A of the CSL, 24 P.S. § 17-1702-A, sets forth the intent of the General Assembly in enacting the CSL, explaining that it is:

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

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

24 P.S. § 17-1702-A.

### **Grounds for Evaluation of an Application**

In reviewing a decision made by the Department, CAB must make a determination based on the factors set forth in section 1745-A(f)(1) of the CSL. 24 P.S. § 17-1745-A(f)(1).

Specifically, CAB must consider:

- (i) The demonstrated, sustainable support for the cyber charter school plan by teachers, parents or guardians, and students.
- (ii) The capability of the cyber charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students under the charter.
- (iii) The extent to which the programs outlined in the application will enable students to meet the academic standards under 22 Pa. Code Ch. 4 (relating to academic standards and assessment) or subsequent regulations promulgated to replace 22 Pa. Code Ch. 4.
- (iv) The extent to which the application meets the requirements of section 1747-A
- (v) The extent to which the cyber charter school may serve as a model for other public schools.

Section 1745-A(f)(1) of the CSL, 24 P.S. § 17-1745-A(f)(1).

A cyber charter school applicant must prove that its application satisfied each of the requirements in section 1745-A(f)(1). 24 P.S. § 17-1745-A(f)(1); *cf. In re: Helen Murray Charter School for the Arts*, CAB Docket. No. 2005-5 at 5 (a charter school has the burden of proof). To properly deny an application, the Department need only demonstrate that the cyber charter school application is deficient in **one** of the criteria enumerated in section 1745-A(f)(1). (*Id.*)

Section 1719-A of the CSL, 24 P.S. § 17-1719-A, requires that charter school applications shall include standards, while an application for a cyber school must meet additional standards under section 1747-A, including, *inter alia*, the following issues:

- The curriculum to be offered and how it meets the requirements of 22 Pa. Code Ch. 4 (relating to academic standards and assessment) or subsequent regulations promulgated to replace 22 Pa. Code Ch. 4. (Section 1747-A(1)),
- The curriculum to be offered and the methods of assessing whether students are meeting educational goals. (Section 1719-A(5)),
- The technical support that will be available to students and parents or guardians. (Section 1747-A(9)),
- The proposed faculty and a professional development plan for the faculty of a charter school. (Section 1719-A(13)),

Finally, because EECCS concerns a cyber charter school application, it is also subject to the requirements of Section 1747-A of the CSL, 24 P.S. 1747-A, which pertinently provides:

In addition to the provisions of section 1719-A, an application to establish a cyber charter school shall also include the following:

- (1) The curriculum to be offered and how it meets the requirements of 22 Pa. Code Ch. 4 (relating to academic standards and assessment) or subsequent regulations promulgated to replace 22 Pa. Code Ch. 4.

### **Analysis of Grounds for Denial for this Case**

#### **1. The demonstrated, sustainable support for the cyber charter school plan by teachers, parents or guardians, and students.**

The CSL requires a cyber charter school application to consider the “demonstrated, sustainable support for the cyber charter school plan by teachers, parents, other community members and students” as set forth in 1745-A(f)(1)(i). EECCS asserts that both CAB and the Commonwealth Court have established that a charter applicant does not need to demonstrate sustainable support in each category; rather sustainable support is analyzed in the aggregate, and therefore does not preclude a finding of sustainable support with its proposed founding coalition. Sustainable support is “support sufficient to sustain and maintain the proposed charter school as an on-going entity.” *Brackbill v. Ron Brown Charter Sch.*, 777 A.2d 131 (Pa. Cmwlth. 2001).

Sustainable support is not measured by individual categories, rather it is measured in the aggregate. *Carbondale Area Sch. Dist. v. Fell Charter Sch.*, 829 A.2d 400 (Pa. Cmwlt. 2003).

In its review of EECCS's application, the Department found that EECCS had not demonstrated evidence of sustainable support by community members, parents, or educators as required by section 17-1745-A(f)(1)(i) of the CSL. EECCS provided letters of support and petition signatures, a presence on social media, through "likes" on Facebook and Instagram followers, and a pre-enrollment of 96 students.

EECCS has the support of Pennsylvania State Senator Pat Browne, Executive Director of the Workforce Board of the Lehigh Valley Nancy Dischinat, Senior Vice President of QND Dank Sharon Michael, owner of Wall2Wall Pest Control Chuck Rockmore, and Lenny McAllister of the Pennsylvania Coalition of Public Charter Schools. In addition, EECCS has included numerous letters and petition signatures demonstrating community support, support from parents, and a list of museums, community organizations, businesses, charter schools, politicians and political groups, religious organizations, and universities.

EECCS further argues that an applicant can demonstrate sustainable support through the use of unverified petitions. *Montour School Dist. v. Propel Charter School-Montour*, 889 A.2d 682, 687 (Pa. Cmwlt. Ct. 2006). CAB agrees that the degree of opposition<sup>9</sup> is not relevant to determining whether the applicant provides sufficient evidence of demonstrated sustainable support. *See In Re: Phoenix Academy Charter School*, Docket No. CAB 1999-10, p. 24. However, the concern here is that upon closer review, the founding coalition of EECCS only includes five educators and five founding members that are parents. This make-up of the founding coalition is not commensurate with the proposed faculty and enrollment goals (R. 1201a-1202a), and the

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<sup>9</sup> Eight original letters of opposition were submitted to the Department, with four of these commenters providing testimony during the hearing.



educator members were not reflected in the narrative description of the founding coalition (R. 1256a-1264a). Overall, the number of founding coalition parent members is modest compared to EECCS's enrollment goals.

The Department also found EECCS's strategies for the creation of EECCS's proposed board of trustees inconsistent. Specifically, the Department questions the conflicting information on how board members will be selected. In both the original and revised application, EECCS states that (1) any individual interested in Pennsylvania and supporting a high-quality cyber charter school may be *appointed* to the board of trustees, while simultaneously stating that (2) members of the constituency may run and be elected to the board of trustees, while leaving details on who the constituency is and how elections would be conducted undefined. (Revised Application p.67-68,73-74; R. 1270a). The Department also noted in its brief that neither the original nor the revised application answers these discrepancies.

EECCS counters that the board of trustees will be publicly accountable to the public via open meetings and regardless of appointment or election to the board. The board of trustees will receive training on the Sunshine Act, 65 P.S. 271, et seq., Act of July 3, 1986, P.L. 388, as amended (the "Sunshine Act"), Public Official and Employee Ethics Act, 65 P.S. 401-422 ("Ethics Act"); and the Right to Know Law, 65 P.S. § 67.101, et seq. ("the RTKL"). (Revised Application, p. 35) However, the Department asserts that EECCS provides no information on how such constituencies are defined, how membership is structured, or how election procedures unfold. Moreover, there was no public comment in support of EECCS during the hearing. (R. 7a-17a).

Upon review of EECCS's revised application, CAB finds that there is an absence of the significant and meaningful community support required under section 1745-A(f)(1)(i) of the CSL,

24 P.S. § 17-1745-A(f)(1)(i), requiring evidence of sustainable support for the cyber charter school plan by teachers, parents or guardians, and students.

**2. The capability of the cyber charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students under the charter.**

A cyber charter school applicant is required to provide a preliminary operating budget, inclusive of projected revenue sources. 24 P.S. § 17-1719-A(9). Revenue estimates must be sufficient and reasonable to demonstrate the applicant's capability, in terms of both financial support and planning, to provide comprehensive learning experiences for students. For the following reasons, CAB finds that EECCS provided unclear and incomplete information regarding revenues, expenditures, and long-term financial planning, and thus concludes that fundamental budgeting issues exist which affect the ability of EECCS to provide a comprehensive learning experience to its students. (*See* CR, Item 6, Revised Application at R. 49711a-49717a).

a. EECCS does not demonstrate necessary financial support and planning.

In its June 10<sup>th</sup> Decision, the Department asserts that EECCS's Application fails to demonstrate necessary financial support as required by section 24 P.S. § 17-1745-A(f)(1)(ii) of the CSL. The Department notes in its brief that EECCS fails to demonstrate this capability in at least two key areas: (1) its expenditure and revenue plans and (2) its long-term financial vulnerability through inadequate contingencies and controls.

Initially, in its June 10<sup>th</sup> Decision, the Department cited fault with (i) the per-pupil rates used by EECCS; (ii) federal revenues; (iii) a start-up loan from an unidentified party; (iv) employee salary assumptions; (v) facilities and maintenance budget; (vi) budgeted expenses related to insurance; (vii) the budget surrounding student technology and (viii) whether the budget reflects all anticipated operating expenditures. (R. 1202a, R. 1244a-1248a, R. 49711a-49717a).

Upon review of the record, CAB finds that EECCS’s Revised Application provides unclear information on necessary financial support and planning. Specifically, EECCS’s budget relies on assumptions regarding per-pupil base rates that when calculated against projected enrollment do not equal the total projected budget revenue.<sup>10</sup> This discrepancy remains unsupported by the projected enrollment and base rate used by EECCS to determine projected revenue in their budget. Although EECCS maintains that in the event of under-enrollment they would modify the budget to address the shortage and ensure the school is run fiscally responsibly (R. 41a), there are other discrepancies in the Application that evidence overall lack of planning.

Specifically, EECCS’s budget, while assuming a level of enrollment and revenue for federal programs, continues to provide inconsistent revenue projections. For example, the total revenues for the Federal Free and Reduced Price Lunch program (FRPL) in the Revised Application indicate a revenue of \$182,000. However, based on a fiscal year 2022 enrollment estimate of 260 students, the resulting revenue would be \$98,280<sup>11</sup>, not the \$182,000 included in the budget. (CR 25, Revised Application P.5).

Further budget inconsistencies include omissions from each fiscal year from 2022-2026 for employee salaries and anticipated salary costs for Assistant Principal(s) and Data Specialist(s).

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<sup>10</sup> See Table 2 below.

**Table 2: FY 2022 Local Revenues, Assuming Base Rates Provided in Budget**

	Submitted Budget			Revenues, per Calculation	Difference
	Enrollment	Base Rate	Revenues, per Budget		
Regular Education	218	\$12,963	\$2,887,784	\$2,825,934	(\$61,850)
Special Education	42	\$28,721	\$1,218,699	\$1,206,282	(\$12,417)

<sup>11</sup> 260 students x 54% eligibility x \$700 per eligible student = \$98,280.

(R. 049715a). Additional budget irregularities include a term sheet for a line of credit (LOC) to cover “start-up” costs.

There is incomplete and discrepant data on plans for facility and facility maintenance costs in EECCS’s budget. The discrepancies are present in conflicting facility rent costs per square foot and the allocation of responsibility for custodial and long-term facility maintenance in the proffered letter of intent (LOI) and the Revised Application. (*See pp. 79-80*).

There are further inconsistencies between budgeted expenses related to insurance and the rate quote included in the Revised Application. This discrepancy remains unexplained in the Revised Application. There are multiple issues with proposed line-items in the budget surrounding student technology, in that (1) the technology budget does not take into account routine repair or replacement costs of technology; (2) the Technology Services line item contains costs associated with both staff professional development as well as student technology; and (3) while the Revised Application mentions software and hardware, it is unclear whether the budget includes these items and any consumables or internet subsidies needed.

Lastly, there is concern that the budget does not reflect all anticipated operating expenditures. EECCS argues that at the application phase, the budget plan need only be detailed enough for the chartering authority, or CAB on appeal, to determine that the applicant can provide a comprehensive learning experience for students; and that once *approved* as a cyber charter school, they will hire a financial controller to provide financial oversight and ensure compliance and will also partner with an independent educational consulting firm to provide feedback regarding finances. (R. 33a).

b. Fails to demonstrate long-term organizational viability.

The Department asserts that EECCS fails to demonstrate ongoing financial sustainability in budgeted fund balances for each fiscal year by projecting amounts that do not meet the recommended levels of the Government Finance Officer Association’s (GFOA).<sup>12</sup> Further, the Department notes an absence of planning or allocation of funds for contingencies within the budget, should projected revenue fall short of sufficient balances. EECCS argues that it has built into its budget extra room for such contingencies as typically arise. (*See CR. Transcript, p. 98.*) Finally, the Department asserts that long-term organizational viability is not evinced by EECCS’s plan to vest finance and accounting functions in one individual employee, titled as the “Business Office Manager.” (Revised Application, p. 36). The Revised Application does not name the individual charged with these crucial responsibilities so their credentials may not be evaluated, and the comingling of these distinct functions in one individual will make proper integral finance controls difficult to monitor.

EECCS argues in its brief that it has demonstrated its capability to provide a comprehensive learning experience to its students through the expanded curriculum submitted with its Revised Application. (R. 1309a-49085a). CAB finds that EECCS has failed to validate the assumptions underlying its budget.

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<sup>12</sup> See Table 5 below.

**Table 5: Projected Fund Balances as Compared to GFOA Recommendations**

	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>
Budgeted Fund Balance	\$36,428	\$351,792	\$699,756	\$1,100,683	\$1,565,157
2 Months' Revenues	\$732,514	\$973,935	\$1,258,936	\$1,550,277	\$1,848,085
2 Months' Expenditures	\$726,443	\$921,374	\$1,200,942	\$1,483,456	\$1,770,673
Range of Fund Balance	(\$690,015)	(\$569,582)	(\$501,186)	(\$382,773)	(\$205,516)
Shortfall	(\$696,086)	(\$622,143)	(\$559,180)	(\$449,594)	(\$282,928)

Although the CSL does not require final and comprehensive finance and budgetary plans, the information provided must allow CAB to determine that it has the requisite budgetary knowledge and control to provide students with a comprehensive learning experience. *See Accord Legacy Charter Sch.*, CAB Docket. No. 2000-14 at 10; *Leadership Learning Partners Charter Sch.*, CAB Docket. No. 2000-8 at 14.

EECCS's estimations around many key areas of expenditures are either incomplete or internally inconsistent, making it impossible to confirm whether budget projections and financial assumptions are reasonable. Of concern is the insufficient projected fund balance margins that undermine the long-term organizational viability of EECCS. Additionally, the failure to adequately plan for budget contingencies in the event actual revenues are less than projected is especially concerning, considering the lack of a start-up budget. In light of the above, CAB concludes that fundamental financial and budgeting issues exist which affect the ability of EECCS to provide a comprehensive learning experience to its students, and as such, EECCS lacks the capability to provide comprehensive learning experiences to students under Section 1745-A(f)(1)(ii) of the CSL.

**3. Information necessary to demonstrate that the programs outlined in the Revised Application will enable students to meet standards under 22 Pa. Code Chapter 4.**

The Department argues in its brief that EECCS failed to provide an adequate curriculum in all subject areas; failed to adequately outline required staffing and professional development plans; and failed to propose adequate, appropriate practices for vulnerable student populations.

a. EECCS's Revised Application failed to provide key aspects of a K-12 curriculum.

In its Decision, the Department contends that EECCS has not shown that its planned programs will enable students to meet standards set under 22 Pa. Code Ch. 4, as required by section 1745-A(f)(1)(iii), 24 P.S. § 17-11745-A(f)(1)(iii). Specifically, EECCS failed to provide a legible,

articulated K-12 curriculum which prevented the Department from fully evaluating key components of proposed cyber charter school programming. (Revised Application, pp. 10-22 Exhibit A). The Department found that EECCS failed to elucidate with sufficient detail on the curriculum, including its educational technology planning, infrastructure, and delivery, and that the Revised Application was silent on the policies and procedures and the line-item amounts for technology costs and parent reimbursements/stipends.

EECCS contends that while the exact nature of the technology used by students has not been extensively detailed, the requisite budget to procure this technology has been allocated and spread across the budget. (*See* CR, Transcript, p. 72.). In its brief, EECCS further argues that it included in its Revised Application an expanded curriculum consisting of nearly 48,000 pages of information, detailing the content of each lesson and providing materials for the curriculum (R. 1309a-49085a). Additionally, EECCS intends to utilize the Amplify CKLA core curriculum for kindergarten through fifth grade (R. 34a) and will add extra content for science in grades three through five to support its program. Furthermore, EECCS intends to differentiate its instruction by using 21<sup>st</sup> Century technology, utilizing asynchronous and synchronous learning to determine the student's level and needs through vendors such as Apex, Amplify, and McGraw Hill (R. 34a-35a).

The Department argues that the nearly 48,000 pages of information submitted by EECCS does not demonstrate a clear curriculum or planned instruction for all proposed grades and courses as required under 22 Pa. Code Chapter 4, and that this information consisted of grade-level content or pacing guidelines, in ELA and math, which does not equate to curriculum, as defined under 22 Pa. Code § 4.3 (“[a] series of planned instruction aligned with the academic standards in each subject that is coordinated and articulated and implemented in a manner designed to result in the achievement at the proficient level by all students”).

In reviewing the Revised Application, CAB finds that EECCS failed to submit a complete detailing of its curriculum, with objectives to be attained, the content and instructional time devoted to attaining the standard, the alignment of the course with PA standards and procedures for assessment, for each academic content area.

b. EECCS fails to adequately outline required staffing and professional development plans.

EECCS's Revised Application does not sufficiently detail the staff and educator positions, nor does it provide unequivocal statements on staff estimates or student/teacher ratios. Information on the Professional Development Plan in the application furthers this confusion while continuing to fall short of Act 48 requirements for ongoing staff professional development.

Relatedly, the Department noted in its Decision that while EECCS provides information about potential candidates for teaching positions, it does not provide any information *about* the teaching positions for which the teachers may be employed. CAB finds that the Revised Application provides conflicting evidence with regards to its student-to-teacher ratio<sup>13</sup>. EECCS provides an estimate of seventeen positions for teachers/learning facilitators and three positions for special education teachers. (Revised Application, p. 69, 71). However, EECCS fails to indicate how these proposed staffing levels match enrollment projections while increasing estimates for other "staff." (Revised Application, pp. 86-87).

c. EECCS outlines practices that are inadequate to meet the needs of vulnerable student populations.

The Department finds that EECCS's outlined practices are inadequate to meet the needs of vulnerable student populations. More specifically, the Department found that EECCS did not

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<sup>13</sup> Ratio of 1:12 in the first year, eventually transitioning to a ratio of 1:10 in year three and onward versus a ratio of 1:15 shown later in the Revised Application. (pp. 5, 87 and R. 1202a).



discuss in its Revised Application how English learners will be served in terms of instruction models or staffing. The Revised Application did not detail the process by which EECCS's program would be regularly evaluated and adjusted to ensure English learners are overcoming language barriers nor did it address a plan for implementation of bilingual instruction across grades. (R. 53a-R. 55a).

EECCS contends that their plan for implementing framework to serve the needs of English language learners has been created to integrate with generalized coursework and will allow for annual assessments via WIDA, PSSA, and/or Keystone assessments. (*See* CR, Transcript, R. 50a-54a). In addition, EECCS contends in its brief that they have outlined a program for Limited English Proficient students to become more proficient in the English language as well as increase academic achievement, in accordance with 22 Pa. Code § 4.26 and in sufficient detail to demonstrate adherence to the requirements of section 1747-A. (Revised Application, p. 27, Applicant's Brief, R. 50a-58a).

EECCS further contends that they have identified procedures for identifying students with disabilities and meeting their specific needs by means of their existing relationships with special education service providers that "will provide any services needed from speech to OT to counseling to screenings and tests . . . [who] travel and have access to people in the Commonwealth of Pennsylvania." (R. 59a). EECCS notes in its brief that (1) it has established special education programs for those students in need (R. 49752a), (2) in the event a parent/guardian believes a student may qualify for special education, the parent/guardian may initiate testing procedures by making a request to the school, at most 60 days after which the school will begin the testing process (R. 49752a), (3) after testing is completed and a report prepared, there will be a meeting to discuss the results and goals will be set considering the testing results and discussion between the school

and the student's parent/guardian (R. 49752a), and that (4) any special education programs will be specifically tailored to the needs of the student (R. 49752a).

CAB finds that EECCS has failed to provide sufficient curriculum details of its special education programs. Deficiencies in proposed procedures for individuals with disabilities under the Individuals with Disabilities Education Act and 22 Pa. Code Ch.711 persist in the Revised Application. These deficiencies exist in eligibility determinations, the process for the identification of surrogate parents, assistive technology, and the inclusion of a process that parents would follow to request an Independent Educational Evaluation. (R. 1221a-R.1224a).

In all, CAB concludes that EECCS has failed to evince that its planned programs will enable students to meet standards under 22 Pa. Code Ch. 4.

#### **4. Requirements under Section 1747-A of the CSL**

EECCS is required to (1) include a complete curriculum that meets the requirement of 22 Pa Code Chapter 4, (2) provide evidence of community involvement in school planning, including a proposed faculty and the professional development plan, (3) demonstrate capacity for the delivery of continuing professional education and (4) provide evidence of how it will provide adequate liability and other appropriate insurance.

The CSL requires any charter school application to meet standards under section 1719-A, while an application for a *cyber* charter school must meet additional standards under section 1747-A. The Department asserts that EECCS is deficient under the requirements of sections 1719-A and 1747-A of the CSL. Section 1719-A(5) requires that the application outline “the curriculum to be offered and the methods of assessing whether students are meeting education goals.” Section 1747-A(a) requires that an application include “[t]he curriculum to be offered and how it meets the requirements of 22 Pa. Code Ch. 4 (relating to academic standards and assessment) . . .”

CAB agrees that EECCS's Revised Application fails to provide an articulated K-12 curriculum and what is detailed relies heavily on vendor content, providing no evidence of independent verification by EECCS. While EECCS can contract management and administrative roles to for-profit entities, its Board of Trustees must maintain real and substantial authority over both the educational decision-making and the school staff. *West Chester Area School District v. Collegium School*, 760 A.2d 452, 468 (Pa. Cmwlth. 2000), *aff'd per curium*, 812 A.2d 1172 (Pa. 2002). As such, contracting does not excuse EECCS from the need to be independent of and not overly reliant upon service providers, nor does it abrogate EECCS's responsibility to maintain control by defining roles and responsibilities and providing checks on provider conduct. Under *West Chester*, matters for which it should retain control are "budgeting, curriculum, and operating procedures." (*Id.*).

Further, section 1719-A(13) requires the applicant to provide: "[t]he proposed faculty and a professional development plan for the faculty of a charter school." CAB finds that the Revised Application's Professional Development Plan is noncompliant with Act 48, Section 2 in that it fails to provide details on what professional development would be available, who would attend, the number of hours per session, or the number of sessions per school year (Revised Application, pp. 27-28, Exhibit P). In addition, the Revised Application does not include a final teacher induction plan. (Revised Application, p. 87).

Lastly, Section 1747-A (9) requires applicant to disclose: "[t]he technical support that will be available to students and parents or guardians." Notably, the policies and procedures related to technical support are not defined, and the topic of technical support is only nominally addressed. (Revised Application, p. 49).

In summary, after review of the discussion in the context of Sections 1719-A, 1747-A, and 22 Pa. Code Chapter 4, above, CAB concludes that EECCS's Revised Application is non-compliant with these application requirements.

**5. EECCS fails to substantiate that it will serve as a model for other public schools.**

The legislative intent underlying the CSL includes improving student learning, providing new and increased learning opportunities for students and educators alike, and maintaining accountability for meeting measurable academic standards. As a result, the Department is charged with evaluating a cyber charter school applicant, in part, on the degree to which it may serve as a model for other public schools, which include other cyber charter schools.

The 2015 reauthorization of the federal Elementary and Secondary Education Act (ESEA), the Every Student Succeeds Act (ESSA), required states to design and implement systems for holding schools accountable for student outcomes, with particular focus on narrowing outcome gaps for historically underserved populations 20 U.S.C. § 6311. ESSA required states to design and implement systems for holding all public schools, including charter and cyber charter schools, accountable for a wide array of student outcomes, in particular the narrowing of outcome gaps for historically underserved populations 20 U.S.C. § 6311. These accountability systems must incorporate academic achievement, graduation rate, and non-academic measures such as regular attendance. State education agencies must regularly assess school performance against these measures to designate schools for support and potentially more intensive interventions.

In Fall 2022, Pennsylvania completed ESSA required accountability determinations, resulting in school improvement designations for all cyber charter schools currently in operation in the Commonwealth. Specially, all Pennsylvania cyber charter schools currently carry Comprehensive Support and Improvement (CSI) designations – the most intense of three federally

prescribed accountability designations -- indicating that the schools are among the lowest five percent of all public schools that receive Title I-Part A funds in the Commonwealth. Despite the significant overlap between the Commonwealth's existing cyber charter sector and federal accountability designations, combined with the fact that EECCS's existing brick and mortar charter school carries an ESSA accountability designation,<sup>14</sup> EECCS exhibited a limited understanding of ESSA requirements<sup>15</sup> and provided no meaningful basis for proposed achievement and other goals outlined in the Revised Application.

Of concern to CAB is that EECCS lowered its academic goals between its initial (2020) and revised proposals. (CR, Item 7c and 7h, respectively, EECCS Original Application and Revised Application). For example, EECCS indicated in its Revised Application that, by the second year of school operations, half its students will achieve a score of Proficient or Advanced on the "Reading PSSAs" (which the Department presumes is a reference to the English language arts assessment) versus a goal of 65 percent proficiency by year one in the Application.

CAB finds that EECCS employed this same methodology for proficiency on other state assessments, English learner progress measures, and high school graduation rates. With respect to graduation rates, EECCS indicated that "at the end of year 5," or 2026, it will post a four-year adjusted cohort graduation rate of 71.9 percent, barely evading the 67 percent threshold that automatically classifies a public school for CSI, the most intensive school improvement category under the ESSA. More crucially for the outcomes of individual students, EECCS's proposed year

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<sup>14</sup> Executive Education Academy Charter School was designated for Targeted Support and Improvement status in Fall 2022 based on low performing student groups. See [www.education.pa.gov/K-12/ESSA/Pages/Accountability.aspx](http://www.education.pa.gov/K-12/ESSA/Pages/Accountability.aspx).

<sup>15</sup> During the November 12 Hearing, Department staff asked Executive Education to describe its understanding of federal accountability under ESSA. A representative answered: "I'm going to say I don't have enough information at this time to answer that question effectively." (*Id.* at R. 81a.)

five graduation rate goal is more than 18 percentage points behind the state’s federally approved long-term goal (90 percent) for that same year.

CAB is also concerned that EECCS presumes significant fluctuations in student enrollment and retention goals. For example, the Revised Application notes that EECCS will achieve a “high retention rate” that involves retaining “a minimum of 50% of students” year over year while simultaneously raising enrollment levels by at least 100 students annually. (CR, Item 6, Revised Application at R. 1206a). EECCS argues that their instructional tools, student-specific teaching methods, and goals to promote student learning, support the requirement that EECCS demonstrate that it will serve as a model for other public schools. (*See* 24 P.S. § 17-1745-A(f)(1)(v)). The Department maintains that EECCS does not merit imitation or emulation and did not yet have the capacity to serve as a model for other public schools in Pennsylvania, as required by section 1717-A(e)(2)(iv) of the CSL.

EECCS argues that in light of the innovative instructional tools, student-specific teaching methods, and goals to promote student learning, EECCS has demonstrated that it will serve as a model for other public schools. (*See* 24 P.S. § 17-1745-A(f)(1)(v)). The Department noted in its brief that EECCS is relying on its Vision, Mission, and list of goals to support the required criteria section 1717-A(e)(2)(iv) of the CSL.

CAB is not persuaded that EECCS can serve as model for other public schools, given that EECCS exhibits limited knowledge of federally required measures for school improvement, sets outcomes that are unsupported by existing, rigorous measurement systems, envisions dramatic student turnover year after year, and fails to demonstrate that its proposed outcomes are realistic in the context of the performance of its existing charter school.

## **CONCLUSION**

Based on the findings of fact and conclusions of law set forth, and as discussed in this opinion, CAB has determined that EECCS has not met the requirements of the CSL. Thus, the decision of the Department will be upheld, and an appropriate Order follows.

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

<b>Executive Education Cyber</b>	:	
<b>Charter School,</b>	:	
<b>Appellant</b>	:	
	:	<b>CAB Docket No. 2021-06</b>
<b>v.</b>	:	
	:	
<b>Pennsylvania Department of Education,</b>	:	
<b>Appellee</b>	:	

**ORDER**

**AND NOW**, this 15<sup>th</sup> day of July 2024, based on the foregoing and the vote of this Board<sup>16</sup>,  
the Appeal of Executive Education Cyber Charter School is **DENIED**.

For the State Charter School Appeal Board



Dr. Helena Gaspar-Liddle  
Vice Chair

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<sup>16</sup> On April 9, 2024, CAB rendered a tie vote of 3 to 3 and the matter was tabled for further deliberation at CAB’s next regularly scheduled meeting. On May 14, 2024, the Department’s decision to deny the Charter School’s appeal was affirmed by a vote of 4 to 2 with Members Faustman, Liddle, Kennedy, and Alexander voting to deny the appeal. Members Killion and Aichele voted to grant. Member Mumin was recused from all deliberation and voting on this appeal.



**For Petitioner:** Marie K. McConnell, Esquire [mmcconnell@flblaw.com](mailto:mmcconnell@flblaw.com)  
Gretchen L. Petersen, Esquire [gpetersen@flblaw.com](mailto:gpetersen@flblaw.com)  
Fitzpatrick Lentz & Bubba, P.C.  
Two City Center  
645 West Hamilton Street, Suite 800  
Allentown, PA 18101

**For the Department:** Samantha S. Snyder, Esquire [samsnyder@pa.gov](mailto:samsnyder@pa.gov)  
Jessica E. Guise, Esquire [jeguise@pa.gov](mailto:jeguise@pa.gov)  
Office of Chief Counsel  
Pennsylvania Department of Education  
607 South Drive, 3<sup>rd</sup> Floor  
Harrisburg, PA 17120-0600

**Docket Clerk:** State Charter Appeal Board  
Pennsylvania Department of Education  
607 South Drive, 3<sup>rd</sup> Floor  
Harrisburg, PA 17120-0600

**[RA-EDCHARTERBOARD@pa.gov](mailto:RA-EDCHARTERBOARD@pa.gov)**

**Date of Mailing:** July 15, 2024