

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

Vision Academy Charter School of Innovation,	:	
	:	
Appellant	:	
	:	Case No. CAB 2021-07
v.	:	
	:	
Upper Darby School District,	:	
Appellee	:	

OPINION

This matter comes before the Pennsylvania State Charter School Appeal Board (“CAB”) on appeal by Vision Academy Charter School of Innovation (“Vision”) in accordance with the Charter School Law, Act of June 19, 1997, P.L. 225, No. 22, *as amended*, 24 P.S. § 17-1701-A *et seq.* (“CSL”). Vision appeals from the decision issued March 12, 2021, by the Upper Darby School District Board of Supervisors (“District”) which rejected and denied Vision’s application (“Application”). For the reasons stated below, the decision of the District is affirmed and the appeal is dismissed.

FINDINGS OF FACT

Procedural History

1. On November 12, 2020, Vision filed the Application with the District. (VASCI – 000001-002256, 003058-003148).
2. The District accepted supplemental materials from Vision on December 9, 2020, December 14, 2020, December 22, 2020, January 26, 2021, and February 24, 2021. (VASCI – 002272-002379; 002468-002469).

3. On December 14, 2020, the District's Review Team toured Vision's proposed facility. (VASCI - 002628).
4. On December 22, 2020, a public hearing ("First Public Hearing") was held at which Vision was given the opportunity to present the District with its proposal for a charter school. (VASCI – 002689-002841).
5. On January 26, 2021, a second public hearing ("Second Public Hearing") was held at which members of the District's Review Team had the opportunity to question representatives from Vision about the Application. (VASCI – 002842-2973).
6. At the Second Public Hearing, the District also made its own presentation. (VASCI – 002565-002626).
7. Vision attempted to provide supplemental materials on February 2, 2021, but these materials were not considered by the District because they were deemed to contain substantive information about Vision's educational program and the Review Team had not had the opportunity to review these materials prior to the Second Public Hearing. (VASCI - 2649).
8. On February 26, 2021, a special hearing ("Third Public Hearing") was held at which the Review Team presented its findings regarding individuals who disclaimed having signed petitions of support for Vision or who claimed not to know what they were signing. (VASCI – 002400-002467; 2974-3033).
9. On March 2, 2021, following presentation of the Review Team's report, the District issued a resolution to deny the Application. (VASCI – 003055-003056).

10. On March 12, 2021, the District issued a written decision outlining its reasons for denying the Application, specifically finding that Vision failed to meet any of the criteria under 24 P.S. § 17-1717-A(e)(2). (VASCI – 002645-002687).
11. On June 1, 2021, Vision and the District executed a stipulation that Vision had met the statutory requirements for perfecting an appeal to the CAB, and the Honorable Barry C. Dozor of the Court of Common Pleas of Delaware County issued a decree establishing the sufficiency of the appeal. (*See Appeal from Denial of Charter School Application and its attachments*).
12. This timely administrative appeal followed. (*Id.*).
13. On October 25, 2021, Hearing Examiner Ember S. Jandebour was appointed to manage the filing of briefs and motions to supplement the record. (*See Secretary's Letter Appointing a Hearing Officer dated October 25, 2021*).).
14. On November 16, 2021, Vision filed a Motion to Supplement the Record, in which it sought to submit the materials that had been rejected by the District on February 2, 2021. (*See Motion to Supplement the Record of Appellant, Vision Academy Charter School of Innovation*).
15. On December 1, 2021, the District filed a response in opposition to Vision's Motion to Supplement the Record, arguing that the supplemental materials were not previously unavailable and should have been submitted for consideration prior to the Second Public Hearing. (*See Upper Darby School District's Brief in Opposition to Vision Academy Charter School of Innovation's Motion to Supplement the Record*).
16. By Order dated December 16, 2021, Hearing Examiner Jandebour denied Vision's Motion to Supplement the Record. (*See Order dated December 16, 2021*).

17. On February 7, 2022, Vision filed its brief, along with a separate document containing its proposed findings of fact and conclusions of law. (*See Appellant's Brief and Proposed Findings of Fact*).
18. On March 21, 2022, the District filed its brief. (*See Appellee's Brief*).
19. On June 13, 2022, the District filed a supplemental certified record that contained portions of the Application that had been theretofore omitted from the certified record. (*See Upper Darby School District Supplemental Certified Record; VASCI – 003058-003148*).
20. On September 13, 2022, a hearing was held before the CAB at which counsel for Vision and the District made presentations and responded to questions from members of the CAB. (*See Notes of Testimony, 09/13/22 CAB meeting*).
21. On October 18, 2022, the CAB voted to deny the instant appeal. (*See Notes of Testimony, 10/18/22 CAB meeting*).

Certified Record

22. The record, as certified by the District, includes the table of contents from the Application indicating that Appendix B of the Application contains 20 separate subsections totaling 3,713 pages. (VASCI – 000003-000004).
23. Appendix B, as constituted in the certified record, contains materials from only 10 of the 20 subsections delineated in the table of contents, some of which are reproduced twice, some of which appear to be incomplete, totaling only 1,662 pages, and in a different order than what is delineated in the table of contents. (VASCI – 000242-001903).¹

¹ The only documents from Appendix B that were included in the certified record are as follows:

1. Science Curriculum Frameworks (K-8) (VASCI – 000242-000358)
2. PE Alignment with Spark (VASCI – 000359-000380)
3. PE Lessons Core Knowledge Integrated (VASCI – 000381-000395) (appears to be incomplete)

24. Vision has not lodged any objection to the apparently incomplete certified record, nor has it sought to supplement the record with the materials that appear to be missing from Appendix B.
25. The missing portions of Appendix B consist of additional curricular materials that are not necessary for the ultimate disposition of this appeal.

Community Support

26. Vision submitted data showing that 376 students had submitted pre-enrollment forms. (VASCI – 001932-001950; 002362; 002379; 002469).
27. The District found that 176 of the 321 pre-enrollment students identified in the initial application do not live in the District’s catchment. (VASCI – 002605).
28. Vision averred that 160 of the first 352 pre-enrollment students reside in the District. (VASCI – 002887).

-
4. English Language Arts lesson summaries for Grade 8, Kindergarten, Grade 8 (again), Kindergarten (again), Grade 3, Grade 4, Grade 5, Grade 1, Grade 2, Grade 3 (again) (VASCI – 000396-000891)
 5. Core Knowledge-CCSS Math Alignment (VASCI – 000892-001001)
 6. CK_CCSS_ELA Alignment (VASCI – 001002-001143)
 7. Core Knowledge-CCSS-ELA (Writing, Grammar, and Usage) Alignment (6-8) (appears twice) (VASCI – 001144-001281)
 8. Career Education Curriculum Frameworks (K-8) (VASCI – 001282-001295)
 9. ACTFL Proficiency Guidelines 2012 (VASCI – 001296-001342)
 10. Grade 4 Correlation of Core Knowledge and Pennsylvania’s Academic Standards 2008 (VACI – 001343-001385)
 11. Grade 5 Correlation of Core Knowledge and Pennsylvania’s Academic Standards 2008 (VACI – 001386-001430)
 12. Kindergarten Correlation of Core Knowledge and Pennsylvania’s Academic Standards 2008 (VACI – 001431-001452)
 13. Grade 1 Correlation of Core Knowledge and Pennsylvania’s Academic Standards 2008 (VACI – 001453-001480)
 14. Grade 2 Correlation of Core Knowledge and Pennsylvania’s Academic Standards 2008 (VACI – 001481-001512)
 15. Grade 3 Correlation of Core Knowledge and Pennsylvania’s Academic Standards 2008 (VACI – 001513-001550)
 16. World Language Spanish Frameworks and Thematic Plan Samples (K-8) (VASCI – 001551-001903)

29. The vast majority of pre-enrollment students who reside in the District reside in the eastern half of the District. (VASCI – 002606-002607; 002889).
30. The Application includes petitions with more than 1,000 signatures signifying support for Vision. (VASCI – 001952-001972; 002311-002360).
31. Regarding these petitions, the District determined that 37 signatories resided outside the District, 12 signatories provided duplicate addresses, and the addresses of six signatories were illegible. (VASCI – 002400).
32. The District conducted a further investigation into the validity of these petition signatures which included sending school attendance officers to 198 homes within the District where signatories lived. (VASCI – 002400; 2892).
33. The attendance officers made contact with 125 residents, and presented these residents with the following script:

Hello, we are here on behalf of the Upper Darby School District. We have been informed that you have signed a document in support of a charter school in the Upper Darby School District. Did you know that the Charter school is funded by tax payer dollars and would potentially pull resources away from our already underfunded school district? The Vision Academy of Innovation Charter School is not a NEW Upper Darby School District school. The Upper Darby School District has plans to build its own new elementary school in the 69th [S]treet area. We are also planning on building a new middle school. Please sign this list if you are against the proposed Vision Academy Charter School.

(VASCI – 002400; 002420; 002983-002987).

34. In response to these efforts by the District's attendance officers, 47 residents disclaimed support for Vision. (VASCI – 002400).
35. At the public hearing held on February 24, 2021, the District presented the testimony of six individuals who signed a petition in support of Vision, but now disclaimed support for Vision. (VASCI – 002974-003009).

36. Vision also provided letters of support from 14 individuals. (VASCI – 002364-002377).
37. The District received comments from a number of community members, the vast majority of whom expressed opposition to Vision. (VASCI – 002470-002564; 002773-002799; 002845).
38. Vision has provided the names and contact information for an 11-member Community Advisory Board. (VASCI – 002156).

Curriculum and Education

39. Vision seeks to open as a school serving kindergarten through fourth grade and grow to serve kindergarten through eighth grade. (VASCI – 00002).
40. As will be discussed in greater detail below, Vision’s proposed curriculum features several unique elements, including a world languages program that would start in kindergarten, an extended-day program, the use of “flipped classrooms” in upper grades, and the use of “precise scope and sequence” instruction to teach the Core Knowledge Sequence curriculum. (Record, *passim*).
41. Vision intends to utilize “precise scope and sequence” instruction and employ a “Direct Instruction” model “that emphasizes well-developed and carefully planned lessons designed around small learning increments and clearly defined and prescribed teaching tasks.” (VASCI – 003058-003059).
42. Vision’s overarching vision includes “[p]rovid[ing] every child the appropriate amount of time and support for mastery of content.” (VASCI – 003058).
43. Vision proposes to utilize a “flipped classroom” model in upper grades, which moves teacher instruction outside the classroom and allows class time to be devoted to assignments and collaborative learning. (VASCI – 003060; 003073-003074).

44. The “flipped classroom” instructional model changes the role of the teacher “from presenter of content to learning coach...working with small groups[] and guiding the learning of each student individually.” (VASCI – 003074).
45. The Application also purports to provide its students with “individualized learning” and claims that “[t]eachers can also customize and differentiate curriculum.” (VASCI – 003107).
46. The precise scope and sequence model is contradictory to and incompatible with the flipped classroom model, the notion of customizable and differentiated curriculum, and the goal of providing each child the amount of time that they need.
47. While the Application states that Vision’s goal is to have at least 80% of students in grades six through eight participate in flipped classrooms, Vision was not able to provide a clear answer as to how or why only 80% of those students would participate. (VASCI – 002851-002854).
48. Vision also does not have a thought-out plan for how students with disabilities or English learners would participate in flipped classrooms; when questioned at the Second Public Hearing how such students would participate, Vision’s response was: “They will be provided with resources. And we will try to see if they can do it. If not, you know, we will do it with them in in-school setting.” (VASCI – 002854).
49. Vision proposes to use an “extended day” program to “provide supplemental time for academic improvement” and extracurricular activities. (VASCI – 002867; 003061).
50. However, the extended day program is non-compulsory, students achieving below a 70% grade average in certain classes are not permitted to participate, and some students may be

precluded from participating due to transportation issues. (VASCI – 002091-002092; 002870; 002882).

51. Students who receive educational support during the “extended day” program would not be able to participate in clubs or other extracurricular activities offered during “extended day.” (VASCI – 002898-002899).
52. Vision has structured its school day such that only one intervention period would be available each day to provide remedial services or additional academic support to students, but this period would not exceed an hour in length and may be handled by a staff member who lacks a teaching certification. (VASCI – 002866-002867).
53. Vision proposes to offer a world-language program that begins at kindergarten, allows students to earn high-school credit, and would require students to read a minimum number of books in a foreign language on an annual basis. (VASCI – 002868-002869; 003961-003062; 003071-003073).
54. However, students who are in need of additional assistance with math or reading and students in need of special educational services would be pulled out of world-language classes or other special classes to receive additional interventions. (VASCI – 002869-002870; 002882).
55. Ultimately, students with special educational needs (including students with disabilities, students in need of additional educational intervention, and English learners) will be precluded from meaningfully participating in the programs that Vision holds out as being unique and innovative. (Record, *passim*).

56. The Application, in Appendix N, contains voluminous materials related to English learners and special education, most of which bear the heading “Vision Academy Charter School of Excellence.” (VASCI – 002159-002240).
57. Vision’s policies related to special education repeatedly use the term “mental retardation.” (VASCI – 2166-2189).
58. Vision intends to use the Response to Intervention (RtII) tool to identify and refer students for special education services, but lacks the necessary Department of Education approval to utilize this tool for identification and will not be able to obtain the necessary approval for an indefinite period of time after a charter is granted. (VASCI – 002879-002880; 003083).
59. When questioned at the Second Public Hearing, Vision was unable to identify what specific resources or programs it would use to provide special education services. (VASCI – 002876-002877).

Diversity

60. The District has a diverse racial and ethnic student population: 47.8% of students are Black, 22.9% are white, 14.9% are Asian, 10.7% are Hispanic, 3.5% are more than one race, and 0.1% are American Indian/Alaskan Native. (VASCI – 002591).
61. Vision’s application projects that a majority of the school’s students will be African American. (VASCI – 002872, 003109).
62. When asked about Vision’s plans for educating a diverse student body at the Second Public Hearing, Dr. Mooring (one of the founding members of Vision) responded that Vision is focused on improving the performance of African American students and that while “other

students in subgroups may come,” Vision is anticipating an African American student body. (VASCI – 002872-002873).

Discipline Policy

63. The Application includes a student handbook that contains a disciplinary policy. (VASCI – 002093-002099).

64. One section of the disciplinary policy is labeled “ZERO TOLERANCE FOR VIOLENCE,” but the policy itself does not take a “zero tolerance” approach, instead presenting a nuanced, graduated approach to student discipline. (VASCI – 002093-002099).

Proposed Facility

65. Vision intends to lease its proposed facility, located at 4 Rockbourne Road in Clifton Heights, Pennsylvania 19018. (VASCI – 000002; 001926-001930).

66. The District’s Review Team found that the proposed facility is located in a flood plain; has poor egress and narrow stairwells; an open campus without fences or gates, no monitoring of vehicles or pedestrian traffic, no visitor log or visitor entry system; only one way into or out of the property; no operational fire alarm or system; no eating area; and is not presently zoned for use as a school. (VASCI – 002638).

67. Vision is aware of the above-referenced issues with the proposed facility and intends to work with the facility’s owner to address them so that the proposed facility can be safely used as a school. (VASCI – 001926-001927; 002895-002896).

68. Vision has also budgeted for improvements to its proposed facility. (VASCI – 002008-002018).

Budget

69. The Application includes a section delineating startup and five-year operating projections demonstrating that Vision has considered all necessary budgeting issues and that based on reasonable assumptions, it will have the necessary funds to operate the school it proposes, including the provision of insurance to its employees. (VASCI – 002009-002017).

Due Process

70. The parties have received notice and the opportunity to respond to all documents and proceedings since the filing of the administrative appeal.

CONCLUSIONS OF LAW

1. The CAB has jurisdiction over the instant appeal. Findings of Fact Nos. 1-12; 24 P.S. §§ 17-1717-A(f), 17-1721-A, and 17-1746-A(a)(1).
2. The CAB has the authority under the CSL to agree or disagree with the findings of the District based upon the CAB's review of the certified record. 24 P.S. § 17-1717-A(i)(6).
3. The CAB is statutorily required to conduct its review "on the record as certified by the local board of directors." 24 P.S. § 17-1717-A(i)(6).
4. The CSL mandates that "[a] charter school Application submitted under the [CSL] shall be evaluated by the local board of school directors based on criteria, including, but not limited to," the following:
 1. The demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the public hearing...;
 2. The capability of the charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the adopted charter;
 3. The extent to which the application considers the information requested in §1719- A and conforms to the legislative intent outlined

in §1702-A; and,

4. The extent to which the charter school may serve as a model for other public schools.

24 P.S. §17-1717-A(e)(2).

5. Vision has demonstrated sustained support. Findings of Fact Nos. 26-38.
6. Vision has not demonstrated the capability to provide comprehensive learning experiences to its students. Findings of Fact Nos. 39-59.
7. Vision's Application fails to articulate a coherent mission, but otherwise includes the requisite considerations under Section 1719-A. Findings of Fact Nos. 1, 2, 26-69.
8. Vision's Application does not satisfy the legislative intent of the CSL because, with respect to students with special-education needs, English learners, and students in need of educational interventions, Vision would not improve pupil learning or increase learning opportunities. Findings of Fact Nos. 39-59.
9. Vision would not serve as a model for other public schools. Findings of Fact Nos. 39-59.
10. The parties were provided an opportunity to be heard regarding this process. (Record, *passim*).

DISCUSSION

I. STANDARD OF REVIEW

In reviewing a decision to deny a charter application, the CAB applies a *de novo* standard of review. *West Chester Area Sch. Dist. v. Collegium Charter Sch.*, 812 A.2d 452 (Pa. 2002).

Further, the CSL provides:

In any appeal, the decision made by the local board of directors shall be reviewed by the appeal board on the record as certified by the local board of directors. The appeal shall give due consideration to the findings of the local board of directors and specifically articulate its reasons for agreeing or disagreeing with those findings in its written decision.

24 P.S. §17-1717-A(i)(6). As such, the CAB is empowered to “determine the weight of the evidence behind each finding and draw its own conclusions.” *In re Hills Acad. Charter Sch.*, (No. CAB 1999-12).

The General Assembly enacted the CSL to foster the following goals:

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.

The CSL mandates that “[a] charter school Application submitted under the [CSL] shall be evaluated by the local board of school directors based on criteria, including, but not limited to,” the following:

1. The demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the public hearing...;
2. The capability of the charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the adopted charter;
3. The extent to which the application considers the information requested in §1719- A and conforms to the legislative intent outlined in §1702-A; and,
4. The extent to which the charter school may serve as a model for other

public schools.

24 P.S. §17-1717-A(e)(2). Further, the CSL requires that charter school applications address the following issues:

1. The identification of the charter applicant.
2. The name of the proposed charter school.
3. The grade or age levels served by the school.
4. The proposed governance structure of the charter school, including a description and method for the appointment or election of members of the board of trustees.
5. The mission and education goals of the charter school, the curriculum to be offered and the methods of assessing whether students are meeting educational goals.
6. The admission policy and criteria for evaluating the admission of students which shall comply with the requirements of §1723-A.
7. Procedures which will be used regarding the suspension or expulsion of pupils. Said procedures shall comply with §1318.
8. Information on the manner in which community groups will be involved in the charter school planning process.
9. The financial plan for the charter school and the provisions which will be made for auditing the school under §437 of the CSL.
10. Procedures which shall be established to review complaints of parents regarding the operation of the charter school.
11. A description of and address of the physical facility in which the charter school will be located and the ownership thereof and any lease arrangements.
12. Information on the proposed school calendar for the charter school, including the length of the school day and school year consistent with the provisions of §1502.
13. The proposed faculty and a professional development plan for the faculty of a charter school.

14. Whether any agreements have been entered into or plans developed with the local school district regarding participation of the charter school students in extracurricular activities within the school district. Notwithstanding any provision to the contrary, no school district of residence shall prohibit a student of a charter school from participating in any extracurricular activity of that school district of residence: Provided, That the student is able to fulfill all of the requirements of participation in such activity and the charter school does not provide the same extracurricular activity.
15. A report of criminal history record, pursuant to §111, for all individuals who shall have direct contact with students.
16. An official clearance statement regarding child injury or abuse from the Department of Public Welfare as required by 23 Pa. C.S. Ch. 63 Subch. C.2 (relating to background checks for employment in schools) for all individuals who shall have direct contact with students.
17. How the charter school will provide adequate liability and other appropriate insurance for the charter school, its employees and the board of trustees of the charter school.

24 P.S. §17-1719-A.

II. BURDEN OF PROOF

The degree of proof required to establish a case before an administrative tribunal in an action of this nature is preponderance of the evidence. *Kirkpatrick v. Bur. of Professional and Occupations Affairs, State Bd. of Barber Examiners*, 117 A.3d 1286, 1288 n.7 (Pa. Cmwlth. 2015). Preponderance of the evidence is the least rigorous evidentiary standard. *Helwig v. Com., Dep't. of Trans., Bur. of Driver Licensing*, 99 A.3d 153, 158 (Pa. Cmwlth. 2014). “A preponderance of the evidence is ‘such proof as leads the fact-finder...to find that the existence of a contested fact is more probable than its nonexistence.’” *Dep't. of Trans. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Cmwlth. 2010) (quoting *Sigafoos v. Pa. Bd. of Probation and Parole*, 503 A.2d 1076, 1079 (Pa. Cmwlth. 1986)). In other words, it is a “‘more likely than not’ standard.” *Commonwealth v. \$6,425.00 Seized From Esquilin*, 880 A.2d 523, 552 (Pa. 2005). Accordingly, the record in this matter is reviewed to determine if the evidence that Vision produced at the district

level meets its burden of proving that the Application satisfies all of the requirements enumerated in the CSL at 24 P.S. § 17-1717-A(e)(2), warranting the grant of a charter.

III. DISCUSSION

A. Section 1717-A(e)(2)(i) – Demonstrated, sustainable support

Pursuant to Section 1717-A(e)(2)(i) of the CSL, the granting of a charter depends, in part, upon the “demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the public hearings held under subsection (d).” 24 P.S. § 17-1717-A(e)(2)(i). To satisfy this standard, an applicant must demonstrate “support sufficient to sustain and maintain a proposed charter school as an ongoing entity.” *Bear Creek Cmty. Charter Sch.*, CAB Docket No. 2003-3. Further, a charter applicant must “show that the charter enjoys reasonably sufficient support in the aggregate from all groups, ‘not showing some minimum level of support from each of the more discrete groups listed.’” *Montour Sch. Dist. v. Propel Charter Sch.-Montour*, 889 A.2d 682, 687 (Pa. Cmwlth. 2006) (quoting, *Brackbill v. Ron Brown Charter Sch.*, 777 A.2d 131 (Pa. Cmwlth. 2001)). “Failure to demonstrate strong support in any one category is not necessarily fatal to an application.” *Penn Hills Charter Sch.*, CAB No 2001-07. But a charter applicant must show “a reasonable amount of support in the aggregate” to demonstrate that “the support will maintain the school as an ongoing entity.” *Phoenix Acad. Charter Sch.*, No. CAB 1999-10; *Hill Acad. Charter Sch.*, CAB No. 1999-12.

The District found that although Vision submitted pre-enrollment data, letters of support, and signatures of support, these did not demonstrate the type of support required by Section 1717-A(e)(2)(i). With respect to the pre-enrollment data, the District found that many of the interested families resided outside of the District. Most of the District residents who expressed support for

Vision were from a small number of communities in the eastern half of the district. With respect to the signatures of support, the District's Review Team found instances of residents who disclaimed having signed or who were not actually in favor of Vision. The District also pointed to numerous communications from the public indicating opposition to Vision. Finally, the District faulted Vision for failing to put forth any evidence that it had formed any community partnerships.

Vision asserts that it has demonstrated strong community support, with more than 350 online pre-enrollment forms identifying students for potential enrollment, including 160 students who reside within the District. Vision also presented more than 1,000 signatures of support and notes that the District only identified a small number of signatories who now disclaim support for Vision. Vision further alleges that the District was heavy-handed in sending employees door-to-door to investigate the validity of certain signatures of support. Vision also submitted the names and contact information for an 11-member Community Advisory Board. Vision claims that, viewed in the aggregate, it has demonstrated strong overall support from the community.

Upon a *de novo* review of the record, we find that Vision has, in the aggregate, demonstrated sustainable support under Section 1717-A(e)(2)(i). Indeed, Vision has marshalled community support as demonstrated by the number of pre-enrollment students, more than 1,000 signatures of support², and numerous letters of support, along with a Community Advisory Board. We therefore disagree with the District's conclusion that Vision failed to demonstrate sustainable support.

B. Section 1717-A(e)(2)(ii) – Capability for comprehensive learning experiences

The CSL requires an application to demonstrate “[t]he capability of the charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to

² We are not persuaded by evidence that anyone renounced support for Vision in response to efforts by the District to send attendance officers door-to-door to investigate the validity of petition signatures.

students pursuant to the adopted charter.” 24 P.S. § 17-1717-A(e)(2)(ii). “In order to provide a comprehensive learning experience to students, a charter applicant must demonstrate adequate support and planning in the charter application.” *Duquesne Charter Sch.*, No. CAB 2013-01. An applicant is obligated to provide at least “a roadmap to the school’s operation, goals, teaching strategies and learning methodology,” but may not rely upon mere “general pronouncements.” *Bensalem Keystone Acad. Charter Sch.*, No. CAB 2012-14. An applicant must also explain how “the nontraditional elements of the [c]harter [s]chool will be integrated into the curriculum.” *Comm. Serv. Leadership Dev. Charter Sch.*, No. CAB 2010-02.

The District found that Vision’s professed goal of being an innovative school that would implement a “flipped classroom” model and allow each child the individual amount of time needed to master the course material conflicts with Vision’s concomitant plan to utilize the “precise scope and sequence” educational model, which inflexibly relies upon a script and the strict use of specific resources. We have held that it is indeed problematic for an applicant to showcase a purportedly flexible approach as one of its innovative features, but put forth a rigid, regimented curriculum. *Capital Acad. Charter Sch.*, No. CAB 2007-02. Vision offers no coherent response to this criticism. As we did in *Capital Acad. Charter Sch.*, we hold that the simultaneous employment of contradictory educational models is not consistent with providing comprehensive learning experiences.

Vision’s inadequate preparation to address English learners and students in need of special education or academic interventions is an even more serious deficiency. Vision is not prepared to identify and evaluate students who might be eligible for special-education services. Further, Vision has not developed a plan to integrate special-educational services to students with more intensive needs. Indeed, Vision indicated that students with more intensive instructional needs

would likely be precluded from participating in any of the programs that make Vision unique, such as its world-language program, flipped-classroom instruction, or extracurricular clubs and activities during the optional extended-day program. Vision has also failed to demonstrate a coherent plan for providing instruction to English learners or for educating students who require additional support in English language arts or math. The District found that Vision treats the education of those with special needs as an afterthought. Indeed, Vision’s application materials pertaining to special-education students bear the heading of a different charter school (“Vision Academy Charter School of Excellence”),

Vision does not offer any specific rebuttal to these concerns, but instead vows generally that it will comply with all applicable laws pertaining to special education and English learners.

As we have previously held, the ability to identify students who have special educational needs is a seminal requirement for a charter school. *Family Choice Charter Sch.*, No. CAB 2007-06; *see also* 20 U.S.C. § 1412(a)(3). We agree with the District that Vision does not have a plan to allow students with special educational needs to participate in any of the programs that would make Vision a unique school. Failing to plan for how to integrate such students into these programs deprives them of comprehensive learning experiences.

The District found several additional deficiencies with Vision’s proposed curriculum, but unfortunately, the incomplete certified record precludes meaningful review of these issues. The District faulted Vision for submitting curricular materials that accounted for far less than 180 days of instruction and failing to articulate a clear plan for how it would provide the requisite number of days of instruction. Of the curricular materials included in the certified record, Vision proposes an eighth-grade English Language Arts (“ELA”) curriculum that consists of 158 days of instruction and a fourth-grade ELA curriculum that consists of only 122 days of instruction. The ELA

curricula for kindergarten, first, second, third, and fourth grade also include pacing guides which inexplicably do not account for any holidays or other off days. Vision offers no coherent rebuttal to these concerns. We are precluded from substantively ruling on this issue, but note that to the extent that Vision has failed to plan for full-year instruction, Vision would fail to demonstrate the capability to provide comprehensive learning experiences.

The District also faulted Vision for failing to align its curriculum to state standards and for failing to provide vertical and horizontal articulation of standards and use of resources, which would allegedly result in inconsistencies across classes in the same grade level and across different grade levels. Our review of this issue is hampered by the omissions from the certified record. However, the curricular materials that are included in the certified record would appear to belie the District's findings. The certified record demonstrates alignment of at least Vision's science, ELA, and math curricula, and alignment of its Core Knowledge curriculum to the standards for at least kindergarten through fifth grade. Additionally, the Core Knowledge Sequence described in the Application shows a thoughtful scaffolding of knowledge between grade levels and integration of topics across different classes. The incomplete certified record precludes meaningful review of this issue. However, based on the record that has been provided to us, we are skeptical that the District's findings regarding alignment and vertical and horizontal articulation of standards and resources would be substantiated.

Ultimately, regardless of other issues with its curriculum, Vision's contradictory educational models and failure to account for students with special educational needs precludes Vision from providing comprehensive learning experiences.

C. Section 1717-A(e)(2)(iii) – Factors under Section 1719-A and legislative intent

As delineated above, Section 1717-A of the CSL references a list of factors in Section 1719-A that must be addressed in the application. 24 P.S. §§ 17-1717-A(e)(2)(iii) and 17-1719-A. The District, in its Decision, found the Application to be deficient regarding the information required by 24 P.S. § 17-1719-A(5) (description of the mission and goals of the charter school), (9) (reliable financial plan), and (17) (appropriate insurance for employees).

With respect to Section 1719-A(5), the District contends that Vision's curriculum is poorly thought-out, and that therefore Vision will not be able to achieve its mission or goals. The District also faults Vision for failing to detail how it would use the data from its proposed assessments to improve student outcomes. Vision responds that it has clearly spelled out its mission and vision, and that this suffices under the CSL. However, as noted above, Vision seeks to employ contradictory models of instruction and has failed to adequately explain how it would assist students in need of intervention or special education. As such, Vision has not articulated a coherent, internally consistent mission.

With respect to Sections 1719-A(9) and (17), the District contends that Vision's proposed budget is flawed, in that it does not take account of the cost of benefits provided to District employees, does not feature a concrete enrollment cap, and contains computational errors that misrepresent budgeting needs. Vision responds generally that the submitted budget is adequately detailed and a workable framework. "Perceived deficiencies in particular budget line items are not grounds for denying a charter"—indeed, the application's financial plan does not even need to contain a line-item budget. *Insight PA Cyber Charter Sch. V. Dep't. of Ed.*, 162 A.3d 591, 611 (Pa. Cmwlth. 2017) (*en banc*). All that is required is sufficient information "to show that it has considered the budgeting issues and that based on reasonable assumptions, it will have the necessary funds to operate the school it proposes" and "provid[e] a comprehensive learning

experience for students.” *Id.* (emphasis omitted). We agree with Vision that the submitted financial plan is adequate under the CSL.

Section 1717-A(e)(2)(iii) also requires a charter application to conform to the legislative intent of the General Assembly as expressed in Section 1702-A of the CSL, including the goals of improving learning for students and increasing learning opportunities. 24 P.S. §§ 17-1702-A, 17-1717-A(e)(2)(iii). Because Vision is not prepared to offer comprehensive learning experiences to students with disabilities, English learners, and students in need of educational intervention, Vision falls short of the legislative intent of the CSL.

D. Section 1717-A(e)(2)(iv) – Model for other public schools

Section 1717-A(e)(2)(iv) requires consideration of whether the proposed charter school would “serve as a model for other public schools.” 24 P.S. § 17.1717-A(e)(2)(iv). A charter school is required to “expand the curricular choices available to students and encourage innovative and different teaching methods.” *Bensalem Keystone Acad. Charter Sch.*, No. 2012-14 (quoting *City College Prep Charter Sch.*, No. CAB 2006-1).

The District found that Vision could not serve as a model for other public schools because of the deficiencies with its curriculum, its lack of commitment to diversity and equity, its inconsistent student-discipline policy, and problems with its proposed facility. We agree that the deficiencies with Vision’s curriculum would prevent it from serving as a model school, but are less persuaded by the District’s other findings under this subsection.

A charter-school applicant that fails “to provide a sufficient curriculum plan” cannot be a model for other public schools. *Duquesne Charter Sch.*, No. 2013-01. As discussed above, Vision seeks to employ contradictory educational models and has failed to adequately prepare to provide comprehensive learning experiences to those with special educational needs. As such, Vision

would not serve as a model to other public schools.

The District also concluded that Vision cannot serve as a model school because it is not properly committed to promoting diversity and equity. The District notes that its student body consists of 47.8 % Black students, 22.9% white students, 14.0 % Asian students, 10.7% Hispanic students, 3.5% students of two or more races, and 0.1% American Indian/Alaskan Native students. Vision's application projects that a majority of the school's students will be African American. When asked about Vision's plans for educating a diverse student body at the Second Public Hearing, one of Vision's founders responded that Vision is focused on African American students and that while "other students in subgroups may come," Vision is anticipating an African American student body. The District concluded that Vision's plans were divisive in nature and sought to promote a segregated school population. Vision responds, generally, that it is fully committed to equity and diversity, and notes that many of its board members are immigrants or members of minority groups.

We have previously held that "one of the hallmarks of a public school education" is "provid[ing] a diverse student population from which students can learn and grow." *Roberto Clemente Elem. Charter Sch.*, No. CAB 2012-10. That said, charter schools are permitted to "focus[] on the needs of a particular student population," even where this "may result in a homogenous grouping of students." *Id.*; see also *Vida Charter Sch.*, No. CAB 2009-02. In the absence of a desegregation order, the fact that a proposed charter may be better suited for certain categories of students is immaterial so long as the school's admission policy is nondiscriminatory and the school does not engage in discrimination in favor of or against any student or prospective student. *Provident Charter Sch. for Children with Dyslexia*, No. CAB 2014-06, *aff'd*, 134 A.3d 128 (Pa. Cmwlth. 2016) (*en banc*); *Roberto Clemente Elem. Charter Sch.*, No. CAB 2012-10; *Vida*

Charter Sch., No. CAB 2009-02; 24 P.S. §§ 17-1723-A(b)(1), 17-1730-A. There is no indication that Vision will engage in racial discrimination, nor has the District identified an active desegregation order. As such, the District's concerns about racial diversity and equity are without merit.

The District also faults Vision's discipline policy, alleging that its plan to simultaneously utilize a "Zero Tolerance" approach along with Positive Behavior and Intervention and Support System and Restorative Practices is fundamentally contradictory. Vision counters that while it has styled its policy as "Zero Tolerance for Violence," the detailed information in the Parent-Student handbook makes clear that there is a range of applicable sanctions for misbehavior. The District's criticisms of Vision's discipline policy are not well founded. Vision does indeed offer a thoughtful, nuanced policy for dealing with student discipline, notwithstanding its use of the phrase "zero tolerance" in its subject heading.

The District also found Vision's proposed facility to be deficient. The District alleges that the building presents safety hazards, including narrow stairwells, a lack of fences or gates around the premises, a lack of monitoring of vehicle or pedestrian traffic, no visitor log or visitor-entry system, only one way in or out of the property, lack of a fire alarm or system, and the building's location on a flood plain. The District further noted that the facility lacks a designated eating area and is not zoned for use as a school.

Vision responds that it reasonably expects the owner of the facility to make the necessary improvements so that the facility can be safely used as a charter school, including safety improvements and achieving the proper zoning to allow for use as a school. Vision notes that it has budgeted for such improvements and expects the facility to be up to par by the time students arrive for instruction.

Where an applicant has identified necessary improvements that must be made and has demonstrated a plan for achieving those improvements, it has met its obligations under the CSL. *Carbondale Area Sch. Dist. v. Fell Charter Sch.*, 829 A.2d 400, 408 (Pa. Cmwlth. 2003). The facility deficiencies identified by the District appear to be capable of remediation, and Vision is committed to such remediation. This issue would not preclude Vision from serving as a model school.

IV. CONCLUSION

For all of the reasons stated above giving due consideration to the findings of the District, the evidentiary record, and the requirements of the CSL, the following order shall enter:

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
STATE CHARTER SCHOOL APPEAL BOARD

Vision Academy Charter School :
of Innovation, :
Appellant :
v. : Case No. CAB 2021-07
Upper Darby School District, :
Appellee :

ORDER

AND NOW, this 21st day of December, 2022, based upon the foregoing and the vote of this Board³, it is hereby **ORDERED** that the appeal of Vision Academy Charter School of Innovation is **DENIED**, and the March 2, 2021, decision of the Upper Darby School District to deny a charter is **AFFIRMED**.

For the State Charter School Appeal Board,


Chair

³ At the CAB's meeting on October 18, 2022, the decision was affirmed by a vote of three to one, with Members Marten, Schwartz, and Hagarty voting to deny the appeal and Member Faustman voting to grant the appeal.

For Appellant:

Brian Leinhauser, Esq.
433 W. Market St, Suite 200
West Chester, PA 19382
BLeinhauser@macmainlaw.com

For Appellee:

Mark Fitzgerald, Esq.
10 Sentry Parkway, Suite 200
Blue Bell, PA 19422
MFitzgerald@foxrothschild.com

Docket Clerk:

Terriann Preston-Simpson
State Charter Appeal District, Office of Chief Counsel
Pennsylvania Department of Education
333 Market Street, 9th Floor
Harrisburg, PA 17126-0333
RA-EDCHARTERBOARD@pa.gov

Date of Mailing:

December 21, 2022