

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

<b>Universal Daroff Charter School,</b>	:	
<b>Petitioner,</b>	:	
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	:	
v.	:	<b>CAB Docket No. 2021-08</b>
	:	
<b>The School District of Philadelphia,</b>	:	
<b>Respondent.</b>	:	

**OPINION**

Before the Charter School Appeal Board (“CAB”) is an appeal by Universal Daroff Charter School (“Daroff”) from the April 22, 2021, approval of Action Item No. 31 by the School District of Philadelphia’s Board of Education (“School District” or “District”) adopting the Hearing Officer’s Report, inclusive of findings of fact and conclusions of law, denying Daroff’s request for renewal of its Charter.

Procedural History

On April 30, 2020, the District adopted Action Item #9—Universal Daroff Charter School: Notice of Nonrenewal of Charter—which resolved to conduct a public hearing on charges supporting nonrenewal of Daroff’s Charter. The Notice of Nonrenewal listed 36 grounds for the proposed nonrenewal, including low proficiency rates on the Math, English Language Arts (“ELA”), and Science Pennsylvania System of School Assessment (“PSSA”) exam during the 2015-2016, 2016-2017, 2017-2018, and 2018-2019 school years. The Notice also cited poor School Performance Profile (“SPP”) scores, and failure to meet academic growth standards as

measured by the Average Growth Index (“AGI”) in Math, ELA, and Science in the 2015-2016, 2016-2017, 2017-2018, and 2018-2019 school years. The Notice further cited deficiencies in student attendance, Daroff’s alleged failure to meet its commitments under its Charter, failure to administer the English language proficiency assessment, failure to have a fully compliant enrollment process, inadequate code of student conduct, failure to obtain and maintain required background checks, failure to maintain an adequate student health services policy and comprehensive medical and dental records, and failure to comply with the Sunshine Act and Philadelphia Fire Code.

The District commenced nonrenewal proceedings and Rudolph Garcia, Esq. was appointed to serve as the hearing officer. Because the hearings in this matter took place during the COVID-19 pandemic, the hearings were held virtually over the course of thirteen (13) days. On February 11, 2021, Hearing Officer Garcia issued the Hearing Officer’s Report, *as amended*, wherein he made a recommendation of nonrenewal to the District. On April 22, 2021, the District voted to adopt the Hearing Officer’s Report, which found that Daroff: 1) failed to meet material requirements in its Charter, (2) failed to meet applicable requirements for student performance, (3) failed to meet generally accepted standards of fiscal management and audit requirements, and (4) violated multiple provisions of law from which the Charter School has not been exempted from.

On August 16, 2021, Daroff filed its Petition to Appeal Nonrenewal of a Charter, with CAB, which was docketed at CAB Docket No. 2021-08. Daroff challenges the nonrenewal of its Charter on multiple grounds. Daroff contends that there is not substantial evidence to support the District’s findings against the Charter School, and that the District’s reasons for nonrenewal are

not significant, material, and fundamental. Additionally, Daroff asserts that the District did not show that Daroff materially and repeatedly violated provisions of the Charter or the Charter School Law (“CSL”). Finally, Daroff contends that the District followed a flawed process because the District followed the recommendation of a “biased” hearing officer, who had “conflicts of interest” and “functioned as an advocate for the District,” and because of this, Daroff alleges that its due process rights were violated. On September 7, 2021, the District filed its Answer to the Petition, and on September 17, 2021, it filed a certification of the record created before the District. By letter dated September 23, 2021, the Secretary of Education appointed Ember Jandebour, Esquire to serve as the hearing officer for this appeal.

On October 26, 2021, Hearing Officer Jandebour issued an Order Establishing Deadline to Supplement the Record that required the parties to file a motion to supplement the record on or before November 26, 2021. On November 15, 2021, Daroff filed an Unopposed Motion to Extend a Filing Deadline wherein it sought to extend the time to file any motion to supplement the record to December 10, 2021. On November 16, 2021, Chief Hearing Examiner Debra Sue Rand, on behalf of Hearing Officer Jandebour, issued an Order granting the unopposed motion.

On December 10, 2021, the District filed a Motion to Supplement the Record. The District sought to include in the record the Audited Statements of Universal Education Companies (“UEC”) and Universal Community Homes (“UCH”), which are entities that Daroff engaged with in financial transactions. The District argues that the Audited Statements are relevant to the issue of fiscal mismanagement. Daroff also filed a Motion to Supplement the Record on December 10, 2021. Daroff sought to include the audio/video recording of Hearing Officer Garcia’s presentation at the April 22, 2021 School Board Meeting, along with the 2020-2021 Annual Charter Evaluation

for the Universal Daroff Charter School, and Universal Daroff Charter School's 2020-2021 Annual Report. On December 21, 2021, Hearing Officer Jandebour entered an Order granting Daroff's Motion to Supplement the Record, but did not rule upon the District's Motion to Supplement.

By Order dated January 11, 2022, Nolan B. Meeks, Esquire issued a briefing schedule and by way of letter dated January 14, 2022, this appeal was officially reassigned to Nolan B. Meeks, Esquire to serve as hearing officer for the appeal. On January 19, 2020, Hearing Officer Meeks issued an Order granting the District's December 10, 2021, Motion to Supplement the Record. On February 10, 2022, Daroff filed its Brief in Support of Appeal and the District filed its Brief in Opposition on March 14, 2022. No reply brief was filed.

On March 11, 2022, Daroff filed a Motion to Stay the proceedings in this matter. Daroff sought a stay based upon the District retaining the services of a law firm to conduct an investigation into certain charter schools within the District. In its Motion, Daroff averred that the District's "investigation impacts Daroff and may result in developments relevant to Daroff's appeal...." On March 21, 2022, the District filed an Answer in Opposition to the Motion to Stay. Attached to its Answer as exhibits were CAB decisions in *John B. Stetson Charter School v. The School District of Philadelphia*, CAB Docket No. 2019-06, *Olney Charter High School v. The School District of Philadelphia*, CAB Docket No. 2019-05, wherein CAB denied motions to stay that were based on the same arguments the Charter School made in its Motion. Hearing Officer Meeks issued an Order on March 31, 2022 denying the Motion to Stay based upon the rationale of the aforementioned decisions.

The parties presented their arguments to CAB on June 14, 2022. For the reasons set forth below, CAB holds that there are sufficient legal grounds to justify nonrenewal of Daroff's Charter under section 17-1729-A of the CSL.

### **FINDINGS OF FACT**

1. The CAB adopts by reference and incorporates herein the Findings of Fact set forth in the Hearing Officer's February 11, 2021, Amended Report adopted by the Board of Education on April 22, 2021, except for Findings of Fact 48-53, and makes the additional Findings below.
2. The School District issued an Annual Charter Evaluation ("ACE") report for 2020 for Daroff. Ex. B to Daroff's Motion to Supplement the Record. The 2020 ACE report does not include any updated academic performance data for the 2019-2020 school year because PSSA examinations were not given in 2019-2020 due to the global pandemic. *Id.*, at 8.
3. The School District's 2020 ACE report analyzed attendance data for all schools using a 95% or more attendance metric. However, because of the global pandemic, attendance data reflected in the 2020 ACE report only reflects "attendance through March 13, 2020 and is for informational purposes only." *Id.*, at 9. Through March 13, 2020, only 39% of Daroff students attended school for 95% or more days of school, compared to the Similar School average of 59% and the District Schools average of 56%. *Id.*, at 9, 21.
4. For the 2019-2020 school year, through March 13, 2020, 40% of Daroff's students were chronically absent, which equates to students missing more than 10% of instructional days. Daroff's chronic absentee rates for all students were 19 percentage points higher than School District schools with the same grades and 23 percentage points higher than Similar Schools.

*Id.*, at 9 and 22.

5. The 2020 ACE reflects a material weakness found by Daroff's auditors related to check signing by the former Chief Financial Officer ("CFO") of Daroff after the CFO had been placed on administrative leave in May of 2019 and "should not have been an authorized signer with the ability to continuing signing checks." *Id.*, at 18. This ACE finding resulted from the finding in the 2019-2020 independent audit report by Daroff's auditors.
6. Daroff ultimately implemented new procedures recommended by the auditor so that employees who are placed on leave cease having authority to sign checks. Ex. C to Daroff's Motion to Supplement the Record, at 6.
7. For the 2019-2020 school year, Daroff was owed \$1,542 from Universal Education Companies, Inc. ("UEC"). Other UEC-managed charter schools were also owed money by UEC. Ex. 6 to School District's Motion to Supplement, at 10.
8. During the 2019-2020 school year, UCH received \$500,000 from UEC in management fees for financial management and services such as payroll, human resources, legal, public relations, facility repair and maintenance, and occupancy. Ex. 5 to School District's Motion to Supplement, at 15.
9. Daroff's ACE reports for the 2015-2016, 2016-2017 and 2017-2018 school years are found in Exhibits SD 5-7. Those reports were all issued to Daroff prior to the issuance of notice of nonrenewal, and the ACE reports provided notice to Daroff regarding various academic, operational and fiscal performance data and findings made by the School District's Charter Schools Office ("CSO") on an annual basis. The reports speak for themselves.
10. In the section of the Report's FF marked "Background," references are made to the ACE

for the 2015-2016 school year in FF 45-47, to the ACE for the 2016-2017 school year in FF 48-50, and to the ACE for the 2017-2018 school year in FF 51-53. Report, at A-10 thru A-13. The School District agrees that references in FF 48-50 to the 2016-2017 ACE are inaccurate in that the data cited is actually data from Daroff's 2017-2018 ACE report found in Ex. SD 7. In addition, the references in FF 51-53 to the 2017-2018 ACE inaccurately cite to data from Universal Bluford Charter School's ("Bluford") 2018 ACE report found in Ex. SD 15. The correct background information for Daroff is found in Ex. SD 5-7.

11. Despite the incorrect references to Bluford's ACE report for 2017-2018 in FF 51-53, the Board of Education and Hearing Officer Garcia did not rely on any data about Bluford in reaching the nonrenewal conclusion set forth in the Daroff Report. All of the data cited in the Daroff Report forming the basis of the decision is Daroff's data. *See e.g.* Report, at 8-14, 18-20; FF 104-118.
12. Daroff does not claim the findings included in FF 104-118 are inaccurate. (Daroff Brief at 8).
13. Food inspection violations do not form a basis for nonrenewal of Daroff's charter, either as grounds stated in the notice of nonrenewal for Daroff or in the Daroff Report. Report, at 19-22; Ex. J 2.

### **CONCLUSIONS OF LAW**

1. The Charter School Appeal Board has jurisdiction over this matter. 24 P.S. §17-1729-A.
2. The Charter School Law, Act of June 9, 1997, P.L. 225, No. 22, governs the nonrenewal of a charter by a school district in the Commonwealth of Pennsylvania. 24 P.S. §17-1701-A *et seq.*
3. Universal Daroff Charter School is a charter school operating pursuant to the Charter School

Law within the School District of Philadelphia. 24 P.S. §17-1701-A *et seq.*

4. In determining whether a school district's nonrenewal of a charter is appropriate, CAB shall give due consideration to the findings of the school district's board of directors and specifically articulate its reasons for agreeing or disagreeing with the board of directors. 24 P.S. §17-1729-A(d); *see also, West Chester Area School District v. Collegium Charter School*, 760 A.2d 452 (Pa. Cmwlth. 2000).
5. The intent of the Pennsylvania General Assembly in enacting the Charter School Law was, *inter alia*, to establish and maintain schools that improve pupil learning, to increase learning opportunities for all pupils, to encourage the use of different and innovative teaching standards and to hold charter schools accountable for meeting measurable academic standards. 24 P.S. §17-1701-A. *See New Hope Academy Charter School v. School District of the City of York*, 89 A.3d 731 (Pa. Cmwlth. 2014).
6. During the term of a charter or at the end of the term of a charter, the local board of school directors of a school district may choose not to renew the charter of a charter school based on any of the following:
  - (a) One or more material violations of any of the conditions, standards or procedures contained in the written charter signed pursuant to section 17-1720-A.
  - (b) Failure to meet the requirements for student performance set forth in 22 Pa. Code Ch. 5 (relating to curriculum) or subsequent regulations promulgated to replace 22 Pa. Code Ch. 5 or failure to meet any performance standard set forth in the written charter signed pursuant to section 1716-A.
  - (c) Failure to meet generally accepted standards of fiscal management or audit

requirements.

(d) Violation of provisions of this article.

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

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

24 P.S. §17-1729-A(a).

7. The local board of school directors must give notice of nonrenewal of the charter to the governing board of the charter school, which notice must state the grounds for such action with reasonable specificity and must give reasonable notice of the date on which a public hearing concerning the written nonrenewal will be held. 24 P.S. §17-1729-A(c).
8. The local board of school directors of a school district must conduct a hearing, present evidence in support of the grounds for nonrenewal stated in its notice and give the charter school reasonable opportunity to offer testimony before taking final action. 24 P.S. §17-1729-A(c).
9. The local board of school directors must take formal action regarding the nonrenewal of a charter school at a public meeting pursuant to the Act of July 3, 1986 (P.L. 388, No. 84), known as the “Sunshine Act,” after the public has had thirty (30) days to submit comments to the school board. All proceedings of the school board pursuant to this subsection are subject to the Local Agency Law, 2 Pa.C.S. § 551 *et seq*; 24 P.S. §17-1729-A(c).
10. The District complied with the procedural requirements of the CSL set forth at 24 P.S. §17-1729-A(c) by having provided the notice of nonrenewal to Daroff and by having conducted a nonrenewal hearing at which the District presented evidence to support its grounds for

nonrenewal of the Charter and where Daroff was provided a reasonable opportunity to cross-examine witnesses and present testimony and public comment was obtained prior to the District's decision. 24 P.S. §17-1729-A(c).

11. In determining whether the nonrenewal of a school's charter was appropriate, CAB shall review the record made in the proceedings below and may supplement the record at its discretion with information that was previously unavailable. 24 P.S. §17-1729-A(d).
12. In addition to the record, CAB may consider the charter school plan, annual reports, student performance, and employee and community support for the charter school. 24 P.S. §17-1729-A(d).
13. Because the statutory standards for CAB's review of charter nonrenewal decisions are the same as those for the review of charter denials, CAB shall make a de novo review of the School District's/BOE's determination not to renew Daroff's charter. *Compare* 24 P.S. §17-1717-A(i)(6) with 24 P.S. §17-1729-A(c); *See also, West Chester Area School District v. Collegium Charter School*, 760 A.2d 452 (Pa. Cmwlth. 2000).
14. Once a charter is granted, the charter school is required to comply with the terms and conditions contained in the charter, as well as the school's charter school application, which is incorporated into the charter. 24 P.S. §17-1720-A.
15. The Charter School Law permits a school district not to renew a school's charter if the charter school has committed a material violation of the charter. 24 P.S. §17-1729-A(a)(1).
16. The Charter School Law allows a school district not to renew a school's charter if the charter school fails to meet the requirements for student performance set forth in 22 Pa. Code Ch. 5 (relating to curriculum) or subsequent regulations promulgated to replace 22 Pa. Code Ch. 5,

or if the charter school fails to meet any performance standard set forth in the written charter signed pursuant to Section 1716-A. 24 P.S. §17-1729-A(a)(2).

17. The District has the burden of proof to present sufficient evidence to substantiate its reasons for nonrenewal. 24 P.S. §17-1729-A(c).
18. The District has satisfied its burden of proving the following grounds for the nonrenewal of Universal Daroff Charter School by a preponderance of the evidence:
  - a. Daroff failed to meet material requirements of its Charter. 24 P.S. §17-1729-A(a)(1);
  - b. Daroff failed to meet applicable requirements for student performance. 24 P.S. §17-1729-A(a)(2);
  - c. Daroff violated provisions of law from which it was not exempted. 24 P.S. §17-1729-A(a)(5).
19. Following an independent review of the record before CAB, and after giving due consideration to the findings of the District, CAB finds that the nonrenewal of Daroff's Charter was proper, and, that it is supported by sufficient evidence of record. 24 P.S. §17-1729-A.

## DISCUSSION

### **A. Standard of Review and Burden of Proof**

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

Nonrenewal of a charter by a school district is governed by 24 P.S. § 17-1729-A. Section 17-1729-A provides, in relevant part:

#### **Section 17-1729-A. Causes for nonrenewal or termination.**

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

(1) One or more material violations of any of the conditions, standards or procedures contained in the written charter signed pursuant to section 1720-A.1.

(2) Failure to meet the requirements for student performance set forth in 22 Pa. Code Ch. 5 (relating to curriculum) or subsequent regulations promulgated to replace 22 Pa. Code Ch. 5 or failure to meet any performance standard set forth in the written charter signed pursuant to section 1716-A.2.

- (3) Failure to meet generally accepted standards of fiscal management or audit requirements.
- (4) Violation of provisions of this article.
- (5) Violation of any provision of law from which the charter school has not been exempted, including Federal laws and regulations governing children with disabilities.
- (6) The charter school has been convicted of fraud.

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24 P.S. § 17-1729-A(a). As set forth above, the CSL at 24 P.S. § 17-1729-A permits a local board of school directors to revoke or not renew a school charter based upon several enumerated grounds, including violations of a charter, violations of the CSL, or violations of any provision of law for which the charter school has not been exempted. 24 P.S. §§ 17-1729-A(a)(1)-(5). 24 P.S. §17-1729-A(d) also provides, in part, that CAB may consider the charter school plan, annual reports, student performance and employee and community support for the charter school in addition to the record and shall give due consideration to the findings of the local board of directors. *West Chester Area School District v. Collegium Charter School*, 812 A.2d 1172, 1180 (Pa. 2002).

The CSL at 24 P.S. § 17-1729-A(d) expressly states that "[t]he [CAB] shall have the exclusive review of a decision not to renew or revoke a charter." *Id.* To that end, CAB has the ability to independently determine whether the findings are sufficiently serious or material to justify the nonrenewal of a school's charter. *School District of the City of York v. Lincoln Charter School*, 889 A.2d 1286, 1288 (Pa. Cmwlth. 2006). Here, 24 P.S. §17-1729-A(c) required the School District to produce evidence in support of the grounds for the nonrenewal stated in the Notice of Nonrenewal and provide Daroff a reasonable opportunity to present testimony and other evidence in favor of renewal. *Thurgood Marshall Academy Charter School*, CAB No. 2007-03.

CAB applies a *de novo* standard of review when entertaining appeals from a school district's nonrenewal of a charter. *West Chester Area School District v. Collegium Charter School*, 812 A.2d 1172, 1180 (Pa. 2002). CAB is required to independently review the findings of the local school board for nonrenewal or revocation of a charter in light of the record while giving “due consideration” to them, and then specifically articulate its reasons for agreeing or disagreeing with those findings. See 24 P.S. §17-1729-A(d).

The burden of proof before the CAB is a preponderance of the evidence. 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.

**B. Nonrenewal of the Charter**

The District found that it met its burden of proving each of the following grounds for nonrenewal of Daroff’s Charter: 1) Daroff failed to meet material requirements in its Charter; 2) Daroff failed to meet applicable requirements for student performance; 3) Daroff failed to meet generally accepted standards of fiscal management and audit requirements; and 4) Daroff violated multiple provisions of law from which it had not been exempted. In its Brief in Support of its Petition to Appeal Nonrenewal of a Charter, Daroff divided the issues it was appealing into four

groups: Student Performance Standards and Attendance, Financial Management, Board Governance, School Operation and Other Compliance Matters. (Daroff Br. 40-64). As this is a logical way to present the discussion, CAB will address and consider the issues in the same manner and order.

1. Student Performance Standards and Attendance

In *New Hope Academy Charter School v. School District of the City of York*, 89 A.3d 739 (Pa. Cmwlth. 2014), the Commonwealth Court held that “Chapter 4 of Title 22 of the Pennsylvania Code sets forth the PSSA as the measure of student and school performance and sets standards of performance to be measured by the PSSA, including proficiency.” *Id.* at 737. The court further stated that:

[p]roiciency as measured by PSSA test scores is therefore a Chapter 4 student performance requirement. A consistently low percentage of students scoring proficient or better on the PSSA constitutes a failure to satisfy Chapter 4 student performance requirements and is a valid ground for nonrenewal of a school's charter under Section 1729-A(a)(2) of the [CSL] where the charter school's proficiency rates are lower than those of its school district's schools as a whole and no clear pattern of significant improvement in its PSSA results is shown.

*Id.* at 739 (cleaned up).

In addition to the Chapter 4 student performance standards, Daroff must also abide by the terms of its Charter and any academic performance requirements contained therein. 24 P.S. §17-1720-A(a)(1); *see also, Truebright Science Academy Charter School*, CAB 2013-11 (“When a charter is granted by a local board of school directors, the charter school is required to comply with the terms and conditions of the charter, as well as the information contained in the charter school application, which is incorporated into the charter.” In this regard, under its Charter, Daroff agreed to participate in the District’s Charter School Performance Framework and that the Framework’s

assessment criteria would be used to determine whether Daroff was meeting performance objectives. (Exhibit SD-1, SD-81).

In this case, the District concluded that Daroff failed to meet the standards for student achievement set forth in Chapter 4 and the standards and conditions set forth in the Charter. (Hearing Officer Report, at 7-8). The District found that when analyzing Daroff student performance against the Chapter 4 Standards, the rates of students scoring proficient or advanced in Math and English Language Arts have been consistently low and significantly lower than the rates at the comparison group schools throughout the Charter term.<sup>1</sup> In addition, the rates of Daroff students scoring proficient or advanced in science have been consistently low and significantly lower than the rates in the Charter Sector and School District schools throughout the Charter term. Moreover, Daroff's School Performance Profile ("SPP") scores were below sixty (60) and significantly below the average SPP scores of the Charter Sector and the School District schools in three of the four years for which data is available during the Charter term. Further, Daroff failed to meet Pennsylvania's academic growth index ("AGI") standard in several years and subjects during the Charter term. Finally, the District found that the average percentage of students attending 95% or more of their instructional day was lower than the average percentages at Similar Schools, Charter Sector Schools and School District Schools during the Charter term, and the average percentage of students who were chronically absent at Daroff was higher than each of the

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<sup>1</sup> Under its Performance Framework, the District compares each charter school's performance to the performance of Similar Schools, the Charter Sector and School District schools. The Similar Schools comparison group consists of all students in the same grades at the schools that most closely match the percentages of students at the evaluated school who are: (a) economically disadvantaged, (b) require special education services, and (c) qualify as ELLs. The Similar Schools groups include only public schools operated by the School District that do not have special admissions criteria. The Charter Sector comparison group includes all students in the same grades at brick-and-mortar charter schools in Philadelphia. The School District comparison group includes all students in the same grades at schools operated by the School District. (Exhibit SD-7, SD-81).

comparison schools.

*Pennsylvania System of School Assessment (PSSA) scores*

The below charts show the number of Daroff students scoring proficient or advanced during the relevant school years:

**Table I - PSSA Math: Percent of Students Scoring Proficient/Advanced**

School Year	School Rate	Similar Schools		Charter Sector		District	
		Rate	Difference	Rate	Difference	Rate	Difference
2015-16	7%	13%	-6%	19%	-12%	19%	-12%
2016-17	7%	14%	-7%	21%	-14%	20%	-13%
2017-18	8%	9%	-1%	21%	-13%	21%	-13%
2018-19	9%	12%	-3%	22%	-13%	23%	-14%

**Table II - PSSA ELA: Percent of Students Scoring Proficient/Advanced**

School Year	School Rate	Similar Schools		Charter Sector		District	
		Rate	Difference	Rate	Difference	Rate	Difference
2015-16	16%	34%	-18%	40%	-24%	33%	-17%
2016-17	19%	35%	-16%	42%	-23%	35%	-16%
2017-18	20%	24%	-4%	43%	-23%	37%	-17%
2018-19	22%	26%	-4%	42%	-20%	37%	-15%

**Table III - PSSA Science: Percent of Students Scoring Proficient/Advanced (Grades 4 & 8)**

School Year	School Rate	Similar Schools		Charter Sector		District	
		Rate	Difference	Rate	Difference	Rate	Difference
2015-16	27%	40%	-13%	43%	-16%	38%	-11%
2016-17	34%	30%	4%	39%	-5%	33%	1%
2017-18	28%	24%	4%	41%	-13%	36%	-8%
2018-19	28%	28%	0%	47%	-19%	41%	-13%

(SD-3; Hearing Officer Report, F.F. 104-106).

The record in this case demonstrates that Daroff failed to significantly improve its PSSA proficiency rates over the course of the Charter term. Beginning with Math, the record shows that the percentage of Daroff students scoring proficient or advanced in the 2015-2016 school years was 7%. This rate held steady in the 2016-2017 school year and rose slightly to 8% in the following school year. Finally, in the 2018-2019 school years, 9% of Daroff students scored proficient or advanced in Math. Thus, over the span of four school years, Daroff's proficiency rate only increased 2 percentage points. As shown by the table, Daroff's proficiency rate was lower than each of the comparison

groups. Daroff's proficiency rate was closer to, but still lower, than the Similar Schools comparison group, and significantly lower than the Charter Sector and District comparison groups.

A similar pattern occurred with ELA. In the 2015-2016 school year, Daroff's PSSA proficiency rate was 16%; in the 2016-2017 school year, Daroff increased this rate to 19%. The percentage of students scoring proficient or advanced increased to 20% in the 2017-2018 school year and increased again to 22% in the 2018-2019 school year. Thus, Daroff's proficiency rate increased over four school years. However, during this period, Daroff's scores continued to be lower than the Similar Schools comparison group,<sup>2</sup> and significantly lower than the Charter School and District comparison groups.

With regard to Science, Daroff performed slightly better than Math and ELA. The percentage of Daroff students scoring proficient or advanced in the 2015-2016 school years was 27%, which improved to 34% in 2016-2017. However, the percentage of students scoring proficient or advanced dropped to 28% for both the 2017-2018 and 2018-2019 school years. Thus, over the relevant four-year period, Daroff had what may be described as a mixed record, which appeared to be trending down. Additionally, the percentage of Daroff students that scored proficient or advanced in Science was lower than each of the comparison schools except for the 2016-2017 and 2017-2018 school years as it relates to the Similar Schools and the 2016-2017 school year as it relates to the District.

In sum, over the four-year period, the percentage of Daroff students scoring proficient or advanced in Math, ELA, and Science was consistently lower than that of the comparison schools. Although there was a slight uptick in performance during some years in ELA and Science, the overall

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<sup>2</sup> Through the combination of a slight increase of the percentage of students scoring proficient or advanced by Daroff and a significant decrease of the percentage of students scoring proficient or advanced by the "similar schools," Daroff was able to close the gap from 18% to 4% rate of difference.

picture is clearly one that shows that Daroff students failed to have consistent sustained success and demonstrates that there was a lack of significant improvement in the percentage of students scoring proficient or advanced in the tested subjects. Furthermore, other indicators that could show a clear pattern of improvement are also lacking.

*School Performance Profile Score*

The SPP is a formula that takes into consideration a variety of data points in measuring a school’s academic performance, including raw test scores on the PSSA and Keystone Exams, academic growth through PVAAS scores, graduation rates, attendance rates, College Board testing, college attendance after graduation, and student achievement in Advanced Placement (AP) testing in Mathematics, Reading/Literature, Science/Biology and Writing. *I-LEAD Charter School v. Reading School District*, CAB Docket No. 2016-05. A score below 60 is considered to be very poor performance. (Hearing Officer Report, at 11).

Daroff’s School Performance Profile (SPP) scores are charted below:

**Table VII - Pennsylvania School Performance Profile**

School Year	School Score	Charter Average	District Average
2015-16	37.8	56.7	52.5
2016-17	41.5	57.6	53.0
2017-18	57.1	57.8	54.8
2018-19	50.6	58.6	54.1

(SD–3; Hearing Officer Report, F.F. 109).

As the above chart shows, Daroff’s highest SPP score during the relevant time period was 57.1, and in each year Daroff’s SPP score was lower that the charter school and district averages. Further, although Daroff’s SPP score rose each of the first three years under review, in the final school year, 2018-2019, Daroff’s SPP score dropped 6.5 points.

*Student Attendance*

Student attendance, another measure of a school’s performance used by the District under its Performance Framework, shows that Daroff’s performance was, at best, inconsistent. Daroff’s attendance data is shown in the below charts:

**Table V - Percent of Students Attending 95% or More Days of School**

School Year	School Rate	Similar Schools		Charter Sector		District	
		Rate	Difference	Rate	Difference	Rate	Difference
2015-16	39%	53%	-14%	60%	-21%	45%	-6%
2016-17	46%	47%	-1%	56%	-10%	41%	5%
2017-18	48%	38%	10%	56%	-8%	46%	2%
2018-19	35%	39%	-4%	55%	-20%	48%	-13%

Notes:  
Percentile rank indicates what percent of schools in the comparison group performed lower than the school  
Data can be found at <https://www.philasd.org/performance/programsservices/open-data/>

**Table VI - Percent of Chronically Absent Students**

School Year	School Rate	Similar Schools		Charter Sector		District	
		Rate	Difference	Rate	Difference	Rate	Difference
2015-16	37%	22%	15%	16%	21%	28%	9%
2016-17	27%	25%	2%	18%	9%	30%	-3%
2017-18	25%	34%	-9%	18%	7%	27%	-2%
2018-19	38%	33%	5%	19%	19%	25%	13%

Notes:  
Percentile rank indicates what percent of schools in the comparison group performed lower than the school  
Data can be found at <https://www.philasd.org/performance/programsservices/open-data/>

(SD–3; Hearing Officer Report, F.F. 115-118).

In response to the above data concerning its PSSA scores, SPP scores, and attendance rates, Daroff argues that the District failed to demonstrate that Daroff did not satisfy the academic standards in Chapter 4 or its Charter to support the District’s nonrenewal decision under Section 17-1729-A(a)(2). (Daroff Br. at 42). Daroff further argues that the District “improperly failed to consider Daroff’s academic performance and attendance record in light of the school’s designation as a Renaissance school, its student population profile, its innovative programs, and strong support in the community.” Daroff Br. 42. Citing to *New Hope*, Daroff argues that its academic proficiency/advanced scores have not been consistently lower than its peers, and it has shown a clear

pattern of improvement in its academic outcomes. (Daroff Br. at 42). In furtherance of this argument, Daroff argues that the appropriate comparator group is the “More Similar School” group, and when compared to this group, the record demonstrates that it is providing a quality education and that “measuring [its] academic performance against its neighboring schools, and not the District’s ‘Similar School’ group or across all District and Philadelphia charter schools, is more equitable, and precisely what the CAB suggested in *Delaware Valley Charter High School v. School District of Philadelphia and School Reform Commission*, CAB Docket No. 2016-06.”<sup>3</sup>

In *New Hope*, the Commonwealth Court stated the following regarding comparison schools:

Comparison of a charter school's academic performance to its local school district in applying Section 1729–A(a)(2) is appropriate for two reasons. First, a charter school's students are drawn from the same population as the school district's schools and, where, as here, the charter school is a middle school or high school, its students come from the same group of elementary schools as the school district schools and therefore are likely to have a similar educational background to the students in school district schools. The school district's academic results therefore provide some indication of whether the charter school's academic results are connected to its educational performance or are instead due to preexisting educational disadvantages and deficiencies in the school district.

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<sup>3</sup> Expanding on this point, the Charter School asserts that the Similar School group is not a sufficiently equal comparator to the Charter School’s student population. Referencing its expert testimony, it argues that:

Dr. Schuh credibly testified his ‘More Similar School’ group is a better, more appropriate comparator to [the Charter School] because the schools in the More Similar Schools group are located closer to [the Charter School] (within 3 miles in Philadelphia), enroll students from a catchment area, and have average percentages of economically disadvantaged students, Black students, special education students and ELL students closer to [the Charter School’s] student population profile – thus forming a more apples-to-apples comparison. Compared against the More Similar School cohort, it is clear that [the Charter School] is meeting its duty to improve students’ education...[Charter School’s] average proficiency/advanced Math and Science PSSA scores meet or exceed the PSSA averages of the More Similar Schools group across all years of the Charter term. [The Charter School’s] average proficiency/advanced ELA PSSA score also exceeded the PSSA average of the More Similar Schools group for the 2018-19 school year. [The Charter School] therefore demonstrates clear academic success in comparison to schools with student populations most similar to [the Charter School’s] student population. (Daroff Br. 45-46).

Second, and more fundamentally, consideration of the performance of the school district's schools is relevant to determine whether nonrenewal for failure to meet academic performance standards would serve the educational purposes of the Charter School Law and the Public School Code. Closure of a charter school will send many of its students to the school district schools. If school district schools are achieving better academic results, even if those results are also below state standards, nonrenewal of the charter will place students in schools that better satisfy state educational requirements. In contrast, if a charter school's academic performance, even though poor, is consistently superior to the school district's results, it could be contrary to the purposes of improving learning and providing students a proper education to deny charter renewal based solely on the charter school's test scores. The Board therefore did not err in considering the fact that New Hope's proficiency rates were below those of School District's schools in upholding the nonrenewal of New Hope's charter.

*New Hope Academy Charter School*, 79 A.3d at 740.

Here, the Daroff's academic performance was not only measured against the performance of school operated by the district, but also measured against schools determined to be "similar schools" as well as other charter schools within the district. As the data indicates, Daroff students' overall academic performance was lower during the Charter term than each of these comparison groups. Moreover, Daroff's contention that the District should have used its "more similar schools" comparison group is without merit. As stated above, by the court in *New Hope*, comparing the academic performance of students in a charter school to the performance of students in the district is wholly appropriate and may serve as the basis for nonrenewal in and of itself if the performance of the charter school students is lower than that of the district students. Here, not only did the District use its schools as a comparison group, but it also used comparison groups that have been determined to be "similar" as provided by the District's Performance Framework, as well as other Charter schools in the district. Thus, through the use of a thorough comparison system to evaluate Daroff

performance, there is sufficient evidence demonstrating that Daroff's PSSA test scores failed to satisfy the Chapter 4 student performance requirement.

Further, with regard to attendance, the data shows that with the exception of the 2017-2018 school year, the Charter School students have attended school at lower rates than students in Similar Schools and have had higher rates of chronic absenteeism than students in Similar Schools. Daroff students also had lower rates of attendance and higher rates of chronic absenteeism than students in District schools in 2015-2016, 2018-2019 and in the 2019-2020 school year through March 13, 2020. Finally, the percentage of Daroff students attending school for 95% of days or more has declined since the 2017-2018 school year, and the percentage of Daroff students chronically absent from school has gone up since the 2017-2018 school year. In response to this data, Daroff contends that its "student-attendance performance does not warrant the non-renewal of its Charter" and "Daroff's attendance performance does not amount to a material or fundamental violation of law or the Charter sufficient to warrant nonrenewal." However, under the Charter, student attendance was a part of the District's Performance Framework and was used by the District as an additional measure of academic performance. Under its Framework, the District had two standards it used in its evaluation of charter schools: (1) Percentage of students attending 95% or more instructional days is at or above the District average and at or above the similar school average; and (2) Percentage of students attending less than 90% of instructional days is at or below the District average and at or below the similar school average. (SD-81). Because evaluating student attendance was a part of the Charter School Performance Framework under the Charter, it was proper for the District to review and evaluate Daroff's attendance issues in making the nonrenewal determination.

Therefore, based upon the above, and after careful consideration of the record, CAB concludes that the District acted within its discretion when it declined to renew Daroff's Charter based upon its failure to achieve adequate student performance. 24 P.S. § 1729-A(a)(1), (2).

## 2. Financial Management

Section 1729-A(a)(3) of the CSL provides that a school district may revoke or not renew a charter for “[f]ailure to meet generally accepted standards of fiscal management or audit requirements.” 24 P.S. § 1729-A(a)(3). The School Board found that there were financial health deficiencies in Daroff's short-term and long-term financial metrics. Short-term financial metrics are used to assess an organization's ability to continue to operate in the short term, *i.e.*, for one year. The following metrics did not meet the applicable standard for short-term financial health during the Charter term:

- Daroff's Total Margin was -11.77% FY 2017.
- Daroff's Current Ratio was 0.99 in FY 2017.
- Daroff's Average Days Cash on Hand was only 23 days in FY 2017.

Additionally, long-term financial metrics evaluate an organization's ability to continue to operate into the future, beyond a one-year time span and the District found that Daroff did not meet the applicable standard for long-term financial health during the Charter term, because its Non-Restricted Fund Balance was -1.87% in FY 2017 and -0.06% in FY 2018. The District further found that Daroff had engaged in numerous transactions with other Universal entities that reflected poorly on Daroff's fiscal management. The District found that the Daroff entered into overlapping management contracts with Universal Community Homes (“UCH”) and Charter Choices and paid them both for the same services. The District also found that Universal Education Management

Company (“UEC”), UCH and other Universal owned charter schools owed Daroff various sums of money during the Charter term, some of which was forgiven by Daroff. Based upon this, the District determined that Daroff did not meet the applicable standards for financial health and sustainability and did not meet the applicable standards for fiscal management. (Hearing Officer Report, 19-20).

As observed by the District’s hearing officer and Daroff in its brief, CAB and the Commonwealth Court have upheld nonrenewal determinations under a number of factual scenarios. *See e.g., Renaissance Charter School*, CAB Docket No. 2008-07 (nonrenewal upheld where charter school failed to complete timely audits); *Ronald H. Brown Charter School*, CAB Docket No. 2005-08, *aff’d*, 928 A.2d 1145 (Pa. Cmwlth. 2007) (upholding revocation where charter school had multiple years of a negative fund balances and overspent its budget); *Thurgood Marshall Academy Charter School*, CAB Docket No. 2001-5 (fiscal mismanagement sufficient to support revocation where charter school overspent its budget by over \$140,000; failed to make employer contributions to PSERS; failed to timely pay creditors; placed itself in a budget deficit over \$50,000; and failed to ensure timely audits were performed); *Graystone Academy Charter School v. Coatesville Area School District*, 99 A.3d 125 (Pa. Cmwlth. 2014) (revocation of a charter affirmed when a charter school failed to maintain accurate enrollment data which resulted in overpayments being made by the School District to the Charter School). Further, the Commonwealth Court has found fiscal mismanagement to include: (1) situations wherein a charter school failed to properly update its enrollment data for special education students with the result that the charter school received higher, special education payments approximating \$110,000.00, when it was not entitled to receive said monies; and (2) where a charter school failed to conduct an annual audit. *See Graystone Academy Charter School*, 99 A.3d at 140.

Here, the evidence of record shows that Daroff had unhealthy financial metrics during the Charter term. For FY 2017, Daroff's total margin was -11.77% demonstrating that it spent more money than it received for that fiscal year. For FY 2017, Daroff's current ratio was less than 1, indicating that it did not have sufficient resources to cover its upcoming liabilities. For FY 2017, Daroff's cash on hand was 23 days. Finally, for FY 2017 and FY 2018, Daroff had a negative non-restricted fund balance, and thus indicating an inability to pay unexpected expenses. In addition to the deficiencies in its financial metrics, the record shows that other Universal entities *owed* Daroff various sums of money throughout the Charter term. At the end of FY 2016, UEC owed Daroff \$509,225. At the end of FY 2017 UEC owed Daroff \$326,093 and UCH owed Daroff \$2,583. At the end of FY 2018, UEC owed Daroff \$5,102 and UCH owed Daroff \$1,535. At the end of FY 2019, UEC owed Daroff \$22,486 and UCH owed Daroff \$4,634. Additionally, other Universal charter schools, Universal Vare Charter School and Universal Institute Charter School, owed Daroff \$314,140 at the end of FY 2016. Moreover, Daroff *forgave* debt owed. In FY 2016, Daroff forgave \$326,093 that it was owed by UEC. In FY 2018, Daroff forgave \$2,583 that it was owed by UCH and \$96,053 that it was owed by Universal Vare. The record further shows that Daroff violated the Charter by entering into a management contract with UCH without submitting the contract to the Charter School Office prior to execution. Additionally, an audit report for FY 2019 by Daroff's independent auditors identified as a material weakness that none of the tested checks over \$2,500 contained two signatures as required by Daroff's accounting procedures.

In its brief Daroff argues that the District "did not produce evidence, let alone compelling evidence, that Daroff engaged in financial mismanagement," it further argues that the District did not present any evidence that it engaged in overspending, operated with budget deficits, failed to conduct timely audits, maintained a negative fund balance and/or failed to maintain accurate

enrollment data. Daroff asserts that payments made to other Universal schools is irrelevant, and the fact that “monies were owed, paid and/or forgiven does not support a finding that Daroff fails to meet generally accepted standards of fiscal management.” With regard to failing to submit the management contract to the CSO, Daroff admits in its brief that it failed to do this, describing the failure as an oversight.

Daroff’s financial metrics demonstrate that during FY 2017, Daroff’s financial health was substandard, but its financial metrics improved in FY 2018, 2019, and 2020. However, despite improving financial metrics, Daroff loaning money to other Universal entities, including other charter schools, and forgiving portions of the debt those entities owed Daroff, at a time when its own financial health was substandard is troubling. Moreover, this pattern and practice of other universal entities *owing* Daroff money continued into the fiscal year ending June 30, 2020. Based upon the evidence of record, CAB finds that there is sufficient evidence demonstrating that Daroff failed to adhere to generally accepted standards of fiscal management, which constitutes a material violation under the CSL and the District’s decision not to renew Daroff’s charter on these grounds was proper.

24 P.S. § 17-1729-A(a)(3).<sup>4</sup>

### 3. Board Governance

24 P.S. §17-1716-A sets forth the powers of a school’s board of trustees. Subsection (c) states that “[t]he board of trustees shall comply with the act of July 3, 1986 (P.L. 388, No. 84),<sup>1</sup> known as the ‘Sunshine Act.’” With regard to meetings, the Sunshine Act provides:

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<sup>4</sup> CAB rejects Daroff’s argument that it did not receive adequate notice that “debts owed, paid and forgiven in and of themselves amount to proof of “fiscal mismanagement.” (Daroff Br. at 51). Paragraph 36 of the Notice of Nonrenewal of Charter clearly sets forth those activities as the alleged reasons that Daroff “failed to meet generally accepted standards of fiscal management and audit requirement related to short-term financial health and long-term financial sustainability.” (Exhibit J-2).

Official action and deliberations by a quorum of the members of an agency shall take place at a meeting open to the public unless closed under section 707 (relating to exceptions to open meetings), 708 (relating to executive sessions) or 712 (relating to General Assembly meetings covered).

65 Pa.C.S. § 704. Additionally, under the Sunshine Act:

Written minutes shall be kept of all open meetings of agencies. The minutes shall include:

- (1) The date, time and place of the meeting.
- (2) The names of members present.
- (3) The substance of all official actions and a record by individual member of the roll call votes taken.
- (4) The names of all citizens who appeared officially and the subject of their testimony.

65 Pa.C.S. § 706.

The record shows that the Board of Trustees meeting minutes were deficient throughout the Charter term. The Trustees' minutes failed to identify individuals who provided public comment on several occasions during the Charter term. Additionally, the minutes failed to indicate votes on Daroff's budget, personnel, salaries, or academic calendar, and failed to show that financial matters were discussed in executive session on two occasions in 2017. Further, Daroff failed to post the meeting schedule and the date, time, and location of the meetings on its website.

In its brief, Daroff argues that it has addressed and corrected these issues, and thus Sunshine Act violations are not a proper basis for nonrenewal. Additionally, quoting CAB's decision in *I-LEAD Charter School v. Reading School District*, CAB Docket No. 2016-05, Daroff argues that "courts of common pleas, not CAB, have jurisdiction over open meetings challenges." In *I-LEAD Charter School*, the following violations were found:

I-LEAD's Board held only three to four meetings a year, and the School District introduced copies of every meeting minute supplied by I-LEAD. The Board Minutes admitted into the record show some attempted compliance with the Charter School Law. Six sets of minutes from the 2013-14 school year and half of the 2014-15 school year do show that: (1) each meeting was advertised in accordance with the notice requirements of the Sunshine Law; (2) the Board discussed and approved financial reports, and the school's financial position on the record at each meeting; (3) the Board created an Executive Committee of the school to handle day-to-day operations and matters arising between meetings of the Board; (4) the Board approved restructuring, employee resignations, and staffing requests from the Executive Committee; and (5) the Board voted on important matters such as amending the by-laws to establish an independent committee for facility negotiations and electing Dr. Natalini as Board chair.

*Id.* at p.30.

CAB, after reviewing these violations and finding that I-LEAD admitted to minutes errors and was taking action to correct its Sunshine Act violations, concluded that it "cannot consider these alleged Sunshine Law violations in determining whether or not I-LEAD's charter should be revoked. CAB is not the proper forum in which to judge these alleged Sunshine Law violations."

*Id.* On appeal, the Commonwealth Court reviewed the issue of whether CAB erred "when it refused to consider I- LEAD's alleged Sunshine Act violations as basis for charter revocation."

*Reading School District v. I- LEAD's Charter School*, 206 A.3d 27, 47 (Pa. Cmwlth. 2019). The Court found that in addressing the minutes-recording errors and acknowledging that I- LEAD had worked to correct the Sunshine Act violations "CAB *did* consider these issues and found that I- LEAD was working in good faith to resolve issues." *Id. emphasis added.* Upon review of how the court handled this issue in *I-LEAD Charter School*, and its determination that CAB may consider good faith efforts to address Sunshine Act violations and those considerations may be cited as a basis in support of renewal, then the converse must be true insofar as CAB may consider Sunshine Act violations and, depending upon the circumstances of such violations, cite them as a basis for non-renewal as well. *See, Id.* Moreover, this position is not in conflict with the courts of common

pleas having jurisdiction over open meeting challenges because as the District correctly observes in its brief:

the issue is the enforcement of the CSL's requirement that the Charter School comply with applicable laws, one of which is the Sunshine Act...the school district would not be seeking or resorting to the remedies found in the Sunshine Act to demand compliance but is instead bringing a nonrenewal proceeding based, at least in part, on the noncompliance with the requirements of the CSL.

(District Br. at 40-41).

Here, although Daroff does not dispute past violations, it appears that its Sunshine Act compliance issues have been resolved. (Daroff Motion to Supplement, Exhibit B). Nevertheless, upon careful consideration of the record and the fact that Sunshine Act violations occurred, the violations were repeated, and were made throughout the Charter term, CAB finds that the District's decision not to renew Daroff's charter on these grounds was proper. 24 P.S. 17-1729-A(a)(5).

#### 4. School Operation and Other Compliance Matters

##### i. Background Checks

Pursuant to Daroff's Charter, 24 P.S. § 1-111 and 24 P.S. § 1-111.1 (Act 168), Daroff was required to maintain in its employee files, Pennsylvania child abuse clearances, FBI criminal background checks, Pennsylvania criminal background checks, and Act 168 employment histories for employees hired after December 31, 2014. The record shows that when the CSO conducted a site visit and reviewed a sample of ten files the CSO found that: five of the files did not contain the required FBI criminal background check; four of the files did not contain the required Pennsylvania criminal background check, one file did not contain a valid FBI background check or a Pennsylvania

background check; and all nine files that required Act 168 employment histories did not contain them.

**ii. ACCESS Test**

22 Pa. Code § 4.26 states: “[e]very school district shall provide a program for each student whose dominant language is not English for the purpose of facilitating the student’s achievement of English proficiency and the academic standards under § 4.12 (relating to academic standards). Programs under this section shall include appropriate bilingual-bicultural or English as a second language (ESL) instruction.” In furtherance of this directive, the Pennsylvania Department of Education has directed schools to administer the ESL ACCESS test to English Language Learners (ELL). The evidence of record shows that Daroff failed to administer the ACCESS test to one of sixteen ELLs in the 2017-2018 school year and two of sixteen ELLs in the 2017-2018 school year.

**iii. Code of Conduct**

22 Pa. Code § 12.3(c) provides:

Each governing board shall adopt a code of student conduct that includes policies governing student discipline and a listing of students’ rights and responsibilities as outlined in this chapter. This conduct code shall be published and distributed to students and parents or guardians. Copies of the code shall also be available in each school library.

Additionally, 22 Pa. Code § 12.8(b)(1));

(b) *Formal hearings.* A formal hearing is required in all expulsion actions. This hearing may be held before the governing board or an authorized committee of the board, or a qualified hearing examiner appointed by the board. When a committee of the board or a hearing examiner conducts the hearing, a majority vote of the entire governing board is required to expel a student. The following due process requirements shall be observed with regard to the formal hearing:

(1) Notification of the charges shall be sent to the student’s parents or guardians by certified mail.

The evidence of record demonstrates that Daroff's Code of Conduct for the 2016-2017 school year failed to include provisions requiring written notification of expulsion charges to be sent to parents and guardians. Although this was remedied for the subsequent school years, Daroff's Code of Conduct for the 2018-2019 and 2019-2020 school years failed to require that the notices be sent by certified mail.

Moreover, with regard to expulsions, under its Charter, Daroff is required to conduct school business in accordance with the Commonwealth's open meetings laws. As such, its Board of Trustees was required to vote on student expulsions at a public meeting. 65 Pa.C.S. § 704. The record demonstrates that three student expulsions were approved in executive session.

**iv. Enrollment Documentation**

22 Pa. Code § 11.11(b) provides:

(b) *Enrollment.* A school district or charter school shall normally enroll a child the next business day, but no later than 5 business days of application. The school district or charter school has no obligation to enroll a child until the parent, guardian or other person having control or charge of the student making the application has supplied proof of the child's age, residence, and immunizations as required by law. School districts and charter schools receiving requests for educational records from another school district or charter school shall forward the records within 10 business days of receipt of the request.

Additionally, 24 P.S. § 13-1304-A provides:

(a) Prior to admission to any school entity, the parent, guardian or other person having control or charge of a student shall, upon registration, provide a sworn statement or affirmation stating whether the pupil was previously or is presently suspended or expelled from any public or private school of this Commonwealth or any other state for an act or offense involving weapons, alcohol or drugs or for the willful infliction of injury to another person or for any act of violence committed on school property. The registration shall include the name of the school from which the student was expelled or suspended for the above-listed reasons with the dates of expulsion or suspension and shall be maintained as part of the student's disciplinary record.

Here, the record demonstrates that the CSO reviewed twenty-five student files for enrollment-process compliance and nine files did not contain a parent registration statement as required by 24 P.S. § 13-1304-A.

v. **Health Services**

Daroff's Charter required it to "adopt a plan for providing school health services that complies with Article XIV of the Public School Code." 24 P.S. §14-1402(a), (b) provides in relevant part:

**24 P.S. §14-1402. Health services**

(a) Each child of school age shall be given by methods established by the Advisory Health Board, (1) a hearing test by a school nurse or medical technician, (2) a measurement of height and weight by a school nurse or teacher, who shall use the measurement to compute a child's weight-for-height ratio, (3) tests for tuberculosis under medical supervision, and (4) such other tests as the Advisory Health Board may deem advisable to protect the health of the child.

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(b) For each child of school age, a comprehensive health record shall be maintained by the school district or joint school board, which shall include the results of the tests, measurements and regularly scheduled examinations and special examinations herein specified.

Additionally, 28 Pa. Code § 23.1 provides:

**§ 23.1. Required health services.**

School districts and joint school boards shall provide the following health services for children of school age who are attending or who should attend an elementary, grade or high school, either public or private, and children who are attending a kindergarten which is an integral part of a local school district:

- (1) Medical examinations.
- (2) Dental examinations.
- (3) Vision screening tests.
- (4) Hearing screening tests.

- (5) Threshold screening tests.
- (6) Height and weight measurements.
- (7) Maintenance of medical and dental records.
- (8) Tuberculosis tests.
- (9) Special examinations.

Finally, 28 Pa. Code § 23.8 states:

**§ 23.8. Maintenance of medical and dental records.**

- (a) School districts and joint school boards shall maintain comprehensive medical and dental records of each individual child.
- (b) The records shall contain all the information the school obtains concerning the health of the child.

Here, the evidence of record demonstrates Daroff's Health Services Policy for the 2019-2020 school year did not state when the required student health, dental and vision screening were to occur, and failed to address immunization requirements. Additionally, during a site visit by the CSO, 24 student files were reviewed. The review revealed that of the files reviewed, four of six required medical exams, eleven of twenty-one required dental exams, two of twenty-three required hearing screenings, and two of twenty-three required vision screenings were absent from the files.

**vi. Fire Code Inspections**

Philadelphia Fire Code § 405.5, Record keeping, provides:

Records shall be maintained of required emergency evacuation drills and include the following information: 1) Identity of the person conducting the drill; 2) Date and time of the drill; 3) Notification method used; 4) Employee on duty participating; 5) Number of occupants evacuated; 6) Special conditions simulated; 7) Problems encountered; 8) Weather conditions when occupants were evacuated; 9) Time required to accomplish complete evacuation.

Here, the record shows that the City of Philadelphia’s Department of Licenses and Inspection cited Daroff for numerous violations of the Philadelphia Fire Code, including failure to maintain compliant shelter-in-place and evacuation drill logs.

In response to the above violations of law, Daroff argues that these issues do not support nonrenewal of the Charter “because these alleged violations of the Charter, CSL and/or other laws are either (1) not supported by the facts, or (2) not sufficiently significant, material or fundamental as required under §17-1729-A(a) of the CSL.” (Daroff Br. at 54). Daroff further argues that consideration should be given to its efforts to remediate and correct past violations. (Daroff Br. at 55). CAB finds that the record supports each of the above violations, additionally while one or two isolated violations may not support a nonrenewal determination under the CSL, the evidence here demonstrates a pattern of failing to comply with multiple laws throughout the Charter term, therefore, CAB finds that the District’s decision not to renew on these grounds was proper. 24 P.S. §17-1729-A(a)(5).

### **C. Due Process and Bias Considerations**

Daroff contends that “[t]he District’s renewal process, including as administered by the CSO, is inherently biased against Black-led charter schools.” (Daroff Br. at 60). In support of this contention, Daroff cites to the School District of Philadelphia conducting an investigation into claims of racism and bias in the District’s charter/renewal application process. Because of this investigation, Daroff asserts that “equity demands that its appeal be stayed until the District’s

investigation is completed, and that Daroff thereafter be given an opportunity to conduct further discovery on this issue.”<sup>5</sup> (Daroff Br. at 60).

CAB previously addressed these same issues in *John B. Stetson Charter School v. The School District of Philadelphia*, CAB Docket No. 2019-06, *Olney Charter High School v. The School District of Philadelphia*, CAB Docket No. 2019-05. In considering that the District was conducting this investigation and whether or not to issue a Stay in the above cases, CAB stated:

...the Charter School's request for a stay is based on a potential conclusion as to some practice of the CSO or parts of the authorizing process that might have impacted one or more charter schools in a way that was a pretext and legally violates the CSL and civil rights law, and that such a conclusion could lead to potential changes in authorizing practice, which is too attenuated from this appeal by this Charter School at this time.

It is not clear that the outcome of any such investigation will ultimately affect the District's nonrenewal decision issued to the Charter School, which CAB is tasked to review based upon data and information contained .in the certified record. The Charter School acknowledges that the results of any such investigation is not inherently probative to CAB 's consideration of the pending appeals as it only "could be directly relevant to one" of the Charter School's defenses if it is first determined that the District engaged in discriminatory practices and, second, that it is further determined that such practices affected the District's decision to recommend nonrenewal for the Charter School. Therefore, aside from the outcome advanced by Charter School, there are other potential outcomes as a result of any such investigation which are not relevant to this matter. The Charter School does not clearly reconcile a concern that a purportedly forthcoming investigative report would have a bearing on the instant administrative proceeding.

It is not apparent that District investigation, supported by two articles appended as exhibits, and which lacks details as to timing and scope, may be used as a reason to delay these administrative proceedings. There is no strong indication that the outcome of that investigation would have applicability or effect on the pending litigation and CAB's issuance of a decision, therefore, ii would not be prudent for CAB to delay a decision on these pending appeals, particularly, whereas here, it appears the Charter School is seeking a stay of an indeterminate duration until an investigation has been initiated and conducted.

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<sup>5</sup> Following the filing of its Brief on February 10, 2022, Daroff filed a Motion to Stay on March 11, 2022. The Motion was denied by Order of the Hearing Officer dated March 31, 2022. Counsel for Daroff reraised the stay issue at the June 14, 2022 Argument.

*Olney Charter High School v. The School District of Philadelphia*, CAB Docket No. 2019-05 (Decision on Olney Charter High School’s Motions to Supplement and Motion to Stay, 2/10/22), C.R. 27, Exhibit 2.

The above rationale is applicable to the instant proceeding as well. Thus, the Hearing Officer correctly denied Daroff’s Motion to Stay.

In its final argument, Daroff asserts that the District’s hearing officer was biased and “acted to the benefit of the School District.” (Daroff Br. at 61). Daroff then cites to examples that it contends show the bias of the District’s hearing officer, which concern decisions regarding the conduct of the hearing, evidentiary rulings made during the hearing, and statements made by the hearing officer during the District’s April 22, 2021, meeting where he presented the Hearing Officer’s Report to the District.

Upon review of the record, CAB finds Daroff’s allegations of bias to be without merit. First, ruling on matters concerning hearing procedure and evidence falls squarely within the power and authority granted to the hearing office by the BOE, and in accordance with Local Agency Law. 2 Pa.C.S. § 551 *et seq*; *See also*, (Exhibit J-1). Additionally, it is the nature of adversarial proceedings that one party may be displeased with the decisions and rulings of the presiding officer. Here, from CAB’s review of the decisions and rulings Daroff cites as demonstrating bias and the record as a whole, CAB does not discern any bias on the part of the District’s hearing officer. Finally, with respect to the statements the hearing officer made to the District during its April 22, 2021 meeting, CAB observes that at that stage of the proceedings, the hearing officer had provided his report recommending nonrenewal to the Board and was presenting the recommendation to the Board. In this setting of presentation followed by a question-and-answer

session, it is to be expected that the hearing officer will present the information and respond to the District members' questions in a manner consistent with recommendation, which is what occurred at the meeting. Therefore, the hearing officer's statements in support of his nonrenewal recommendation to the District cannot be cited as evidence of a bias on the part of the hearing officer throughout the proceedings.

### **CONCLUSION**

After reviewing the record and supplemental information provided to CAB, and upon consideration that Universal Daroff Charter School failed to achieve the student academic performance standards outlined in Chapter 4 and the requirements of its Charter, its fiscal mismanagement and board governance issues, along with its violations of multiple laws from which it has not been exempted, and giving due consideration to the findings of the District, CAB finds that the record does support the District's nonrenewal of Universal Daroff Charter School's Charter on the grounds discussed above. Accordingly, the following Order will issue:

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

<b>Universal Daroff Charter School,</b>	:	
<b>Petitioner,</b>	:	
	:	<b>CAB Docket No. 2021-08</b>
v.	:	
	:	
<b>The School District of Philadelphia,</b>	:	
<b>Respondent</b>	:	

**ORDER**

AND NOW, this 6th day of September 2022, based on the foregoing findings of fact, conclusions of law, Opinion and vote of this Board<sup>6</sup>, it is hereby **ORDERED** that the appeal of Universal Daroff Charter School is **DENIED**, and that the nonrenewal decision of the School District of Philadelphia is **AFFIRMED**.

**For the State Charter School Appeal Board:**

  
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<sup>6</sup> At the Board's July 12, 2022 meeting, the Board voted 4 to 1 to deny the appeal.

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**Date of Mailing:**

9/8/2022

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