

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

Philadelphia Collegiate Charter	:	
School for Boys,	:	
Petitioner	:	
	:	CAB Docket No. 2022-05
v.	:	
	:	
School District of Philadelphia,	:	
Respondent	:	

OPINION

BACKGROUND

Before the Charter School Appeal Board (“CAB”) is an appeal by Philadelphia Collegiate Charter School for Boys (“PCCSB”) from a June 24, 2021, decision, by resolution of the Philadelphia School District (“District”) Board of Education (“Board”) denying PCCSB’s May 6, 2021, Revised Application for a five-year charter to operate a school in the District.

Preceding these events, PCCSB filed its initial application on November 15, 2020, public hearings were held on December 22, 2020, and January 20, 2021, and the Board denied the application on March 4, 2021. On May 6, 2021, PCCSB submitted the Revised Application, which was denied on June 24, 2021. On December 14, 2021, PCCSB filed a signature petition with the Court of Common Pleas of Philadelphia County and on April 27, 2022, the Court deemed that petition sufficient. On September 20, 2022, PCCSB filed a Petition to Appeal that referenced

the denial of the *initial* application. On October 10, 2022, the District filed a Motion to Quash the appeal. On October 20, 2022, PCCSB filed an Answer to the Motion to Quash and an Amended Petition to Appeal. CAB heard argument on the Motion to Quash on January 10, 2023, and denied the Motion by Opinion and Order of February 27, 2023. The matter then proceeded forward for review on the merits of the Revised Application.

FINDINGS OF FACT

1. PCCSB identifies itself as a proposed charter school that will be an all-boys, tuition free, college-preparatory public charter school providing a liberal arts education in the Germantown neighborhood and Northwest Philadelphia. *See generally*, Application PCCSB 3-4, Revised Application PCCSB 3-4.
2. It intends to serve “Black and Brown” boys in that area because “Black and Brown boys face barriers that negatively impact academic achievement in K-12 environments.” Revised Application, PCCSB 4-5.
3. Its proposal calls for 220 students in kindergarten, first and fourth grade during year one; second and fifth grade in year two; and third and sixth grade in year three, with the eventual goal of grades K-12 and 1,268 students by 2029-2030. Revised Application, PCCSB 1-2, 58.

4. It will be divided into three academies: College Preparatory Academy for K-3, a Collegiate Lower Academy for grades 4-5 and Collegiate Middle School Academy for grades 6-8. Revised Application, PCCSB 6.
5. Its overall mission is to “provide the finest liberal arts education to Philadelphia’s next generation of young men, ensuring that they will become global citizens trained to serve our community, our nation and our world.” Revised Application, PCCSB 5.
6. The applicant group is composed of individuals who are or were associated with Baltimore Collegiate School for Boys (“Baltimore Collegiate”) and/or Five Smooth Stones Foundation, the non-profit corporation operating Baltimore Collegiate. Application, PCCSB 3, 5, 32, 41-42, 3834, 3894.
7. Five Smooth Stones Foundation had been proposed to provide services for the expansion of the Baltimore Collegiate model into Philadelphia through Philadelphia Collegiate. Application, PCCSB 41-42.
8. In the original Application filed on November 15, 2020, and in the Revised Application, the applicant expressed the desire to bring the Collegiate model utilized at Baltimore Collegiate to Philadelphia and relied on the purported success of Baltimore Collegiate and the roles that the applicant team plays in Baltimore Collegiate’s operations. Application, PCCBS 3-4, 8; Revised Application, PCCSB 3-4, 8.

9. Baltimore Collegiate has been issued a “Not Effective” rating in Operator Capacity, by Baltimore City Public School Office of Achievement and Accountability Division for Research Services, meaning that “throughout the charter or contract term the school has operated ineffectively as evidenced by the fact that the operator does not meet state or federal reporting requirements, or critical District or federal obligations or has ineffectively managed grants.”

Ex. A to the Motion to Supplement.

10. Jack Johnson Parnell was the founding director of Baltimore Collegiate and will serve as CEO of PCCSB. Revised Application, PCCSB 8.

11. Mr. Parnell was removed from his position as the founder and executive director of Five Smooth Stones due to the poor rating received by Baltimore Collegiate. Ex. A to the Motion to Supplement. Ex. A to the Motion to Supplement.

12. The proposed budget in the Revised Application reflects \$950,000 in revenue from unidentified sources, a reliance on \$600,000 from federal grants that have not been awarded, and underestimates of cost for health care coverage for all employees. Decision on Revised Application, p. 50.

CONCLUSIONS OF LAW

1. CAB has jurisdiction in this matter. Section 1717-A(f) and (i)(1) of the Charter School Law (“CSL”), Act of March 10, 1949, P.L. 30, *as amended, added by* Section 1 of the Act of June 19, 1997, P.L. 225, 24 P.S. § 17-1717-A(f) and (i)(1).
2. The CSL governs the application process, the approval process, the revocation and renewal of charters, and the operation of charter schools in Pennsylvania. 24 P.S. §§ 17-1701-A – 17-1751- A.
3. PCCSB was given notice and an opportunity to be heard in conformity with the CSL and notions of due process.
4. CAB has the authority under the CSL to agree or disagree with the findings of the School District Board based upon its review of the certified record. 24 P.S. § 17-1717-A(i)(6).
5. PCCSB did not meet its burden to show that it would serve as a model for other schools.
6. PCCSB did not meet its burden to show a governance structure that complies with the law.
7. PCCSB did not meet its burden to show that based on reasonable assumptions, it will have the necessary funds to operate the school it proposes. *Insight PA Cyber Charter Sch. v. Dep't of Educ.*, 162 A.3d 591, 611 (Pa. Cmwlth. 2017).

DISCUSSION

I. Standard of review and burden of proof

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

The degree of proof required to establish a case before an administrative tribunal preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). A preponderance of the evidence is the lowest degree of proof recognized in civil judicial proceedings, *Lansberry, supra*, 578 A.2d at 602, citing *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950), and is generally understood to mean that the evidence demonstrates a fact is more likely to be true than not to be true, or if the burden were viewed as a balance scale, the evidence in support of the proponent's case must weigh slightly more than the opposing evidence. *Se-Ling Hosiery*, 70 A.2d at 856. Accordingly, the record in this matter is reviewed to determine if the evidence which

the Charter School produced at the hearings meets the Charter School's burden of proving that its revised application satisfies all the requirements enumerated in the CSL at Section 1717-A(e)(2), 24 P.S. § 17-1717-A(e)(2), thus, warranting the grant of the revised application.

II. Criteria for evaluating an application

Under Section 1717-A(b)(2) of the CSL, 24 P.S. § 17-1717(A)(b)(2):

(2) A charter school application submitted under this article shall be evaluated by the local board of school directors based on criteria, including, but not limited to, the following:

(i) The demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the public hearing held under subsection (d).

(ii) 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.

(iii) The extent to which the application considers the information requested in section 1719-A and conforms to the legislative intent outlined in section 1702-A.

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

In addition, pursuant to Section 1719-A of the Charter School Law 24 P.S. § 17-1719-A, *added by* Section 1 of the Act of June 19, 1997, P.L. 225, the applicant must address the following elements in its application:

(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 section 1723-A.
- (7) Procedures which will be used regarding the suspension or expulsion of pupils. Said procedures shall comply with section 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 section 437.
- (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 section 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 section 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.

III. Bases for the Board's denial

The Board denied the Revised Application for the following reasons:

- The revised application fails to demonstrate that the applicant can serve a model for other public schools in the District.
- The revised application does not conform to the legislative intent in 24 P.S. § 1719-A.
- The revised application does not include evidence of sustainable support.
- The revised application does not demonstrate the capability of the applicant, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the charter *and* the revised

application fails to describe a complete and comprehensive curriculum that is aligned to state standards.¹

IV. Legal Analysis

A. Model for other public schools

Section 17-A (b)(2)(iv) of the CSL directs that an application be evaluated on the basis of the “extent to which the charter school may serve as a model for other public schools.”

In its decision, the Board expressed concern because the PCCSB is proposed to be modeled after Baltimore Collegiate and, although that school’s charter was renewed, the renewal report “did not cast a flattering or compliant picture of operations.” Decision, p. 54.

Before CAB, the District was permitted to supplement the record to provide more recent information on the status of Baltimore Collegiate and supplied a “School Effectiveness Review for Baltimore Collegiate,” dated May 17-19, 2022, that had

¹ Because CAB has used curricula as a way to assess whether an application provides a comprehensive learning experience, *see, e.g., In Re Appeal of Denial of Pocono Mountain Mathematics Sciences and Technology Charter School by the Pocono Mountain School District*, CAB 2004-2005, pp. 15-16, 24 P.S. §17-1719-A(5), these two factors are often considered in tandem.

been compiled by the Baltimore City Public Schools only a few weeks before the Board issued its decision. *See* Ex. B to the Motion to Supplement. It also provided a February 2023 “Operator Renewal Recommendation Report” from the Baltimore City Public School Office of Achievement and Accountability Division for Research Services. *See* Ex. A to the Motion to Supplement. This supplementation was permitted because the information was not available at the time of the hearing and because there is clearly some overlap between those managing Baltimore Collegiate and those who seek to manage PCCSB. Key here is the February 2023 report, which found:

Five Smooth Stones Foundation, the operator of Baltimore Collegiate School for Boys, has had serious, ongoing operational difficulties over the course of the contract, leading to a “Not Effective” rating in Operator Capacity, meaning that *throughout the charter or contract term the school has operated ineffectively as evidenced by the fact that the operator does not meet state or federal reporting requirements, or critical District or federal obligations or has ineffectively managed grants*. In October 2021, the operator was issued a Notice of Probation for ongoing operational issues that had not been remedied ... Probation noted four areas in which the operator’s actions put the safety and wellbeing of students, staff, and the district at risk. The first was regarding background checks for employees of the operating organization, Five Smooth Stones Foundation, where the operator repeatedly failed to accurately and completely report the identities of its employees, or fully conduct criminal background checks for all employees who worked in the school, in violation of state law and district requirements. The second was for violations of the charter law and contract where the operator’s employees were, in some instances, taking over roles reserved for employees of the district, which is a violation of the state’s charter law. The third area covered by the Notice of Probation was Five Smooth Stone’s performance with grant funds, where, due to a failure to establish proper procedures for management

of grant funds, which is a core responsibility of charter operators, over \$450,000 in funding meant for Baltimore Collegiate's students was forfeited in school years 2020-21 and 2021-22. Finally, the Notice of Probation addressed the school's failure to deliver science instruction to students during an entire semester, which is a violation of state and district requirements. **After receiving the Notice of Probation, the board of Five Smooth Stones Foundation took the serious step of replacing the organization's founder and executive director,** reorganizing the operating structure and reforming its procedures and posture around concerns. For the remainder of the 2021-22 school year, the operator's performance improved, with support from the district, which provided ongoing technical assistance, guidance, and regular meetings with the operator to check on progress towards operational goals. However, in 2022-23 difficulties in operations reappeared and Five Smooth Stones Foundation was issued a continuance of the prior year's Notice of Probation, noting areas which had not been fully cured from the previous notice, as well as additional areas of difficulty. With respect to these serious concerns in operator capacity, Five Smooth Stones Foundation has taken extraordinary steps to address its difficulties in this area. **In addition to the removal of the founder/executive director noted above,** the operator took difficult steps to improve school operations, including conducting a principal search, finding, and putting a school principal in place with many years' experience in City Schools. The recommendation to continue the school's contract for three additional years acknowledges Five Smooth Stones' commitment to improvement in its operation of the school and gives the operator time to show growth in this area with cognizance of the new team leading the school.

Supplement A, pp. 7-8. (Bolding emphasis added).

PCCSB contends that this poor rating of the Five Smooth Stones Foundation is irrelevant because PCCSB does not intend to utilize the services of Baltimore Collegiate's operator, the Five Smooth Stones Foundation. However, as noted above, there were overlapping personnel and inconsistent statements as to what role, if any, the Five Smooth Stones Foundation would play. For example, Mr. Parnell's

resume indicates he is the Executive Director and Founder of Baltimore Collegiate, which is operated by the Five Smooth Stones Foundation. Attachment 5 to Initial Application. It also indicates that he is President of the Five Smooth Stones Foundation *and was the founder and executive director who was removed*. While the Five Smooth Stones Foundation is not the proposed facility operator in this case, it seems clear that it is the model upon which The Collegiate Charter Foundation is premised, and Mr. Parnell has been heavily involved in both organizations.

It is proper to consider whether the replication of the model has merit by looking to the “established performance [of] the other school run by the individuals forming the Applicant team.” District Brief, p. 39. (Citing, *inter alia*, *Lehigh Valley Academy Regional Charter School v. Bethlehem Area School District and Saucon Valley School District*, CAB Docket Nos. 2000-12/2000-13, at pp. 11-12.) When that is done here, the evidence is compelling that PCCSB’s Revised Application should be denied.

B. Governance structure

Under Section 1919-A(4) an applicant must address in its application “[t]he proposed governance structure of the charter school, including a description and method for the appointment or election of members of the board of trustees.”

PCCSB in its *initial* application indicated that its school would be operated at the outset by the Five Smooth Stones Foundation, which, as noted above, operates

Baltimore Collegiate and whose President at the time of the hearing was Mr. Parnell. The initial application document also indicated that the intent was for a new 501(c) organization titled The Collegiate Schools Foundation to be formed. It had not yet been formed at the time of the Revised Application. *See* Revised Application, p. 48. Nonetheless, an unexecuted draft copy of the proposed agreement was eventually provided by Counsel for PCCSB. *See* Revised Application, pp. 211-253. The intent of the new organization is to manage a portfolio of Collegiate Schools modeled after Baltimore Collegiate. Initial Application, pp. 41-42. The District comments that The Collegiate Schools Foundation will be a third-party management organization; this is admitted in PCCSB's Brief, p. 13.

Section 17-1703 of the CSL requires that a charter school must be organized as a public, nonprofit corporation, and specifically prohibits the granting of a charter to any for-profit entity. *West Chester Area School District v. Collegium Charter School*, 812 A.2d 1172, 1184 (Pa. 2002). The school must be controlled by an independent board of trustees that retains the ultimate authority over the general operation of the school. *Id.* at 1185. The key question is “whether the charter school’s Board retains ultimate control over the direction of the school in conducting this critical examination.” *Insight PA Cyber Charter School. v. Pennsylvania Department of Education*, 162 A.3d 591, 597 (Pa. Cmwlth. 2017).

The District contends that PCCSB does not retain such control. It argues first that PCCSB has merely attempted to adjust its existing Baltimore operation, which is controlled by Maryland law, to fit into Pennsylvania's structure. It also notes that the adjustments made to the narrative about the role of the Five Smooth Stones Foundation and The Collegiate Schools Foundation are not reflected in the documents submitted as attachments to the Revised Application and that the Five Smooth Stones Foundation continues to be mentioned and discussed as managing PCCSB. In addition, the Revised Application uses various titular heads to describe one or more leadership positions, without clarifying/distinguishing those positions.

Further, there is conflicting information on if PCCSB would have a contractual relationship with *both* the Five Smooth Stones Foundation *and* The Collegiate Schools Foundation. At the hearing Mr. Parnell indicated that the Five Smooth Stones Foundation would not provide any services to PCCSB, but then later stated it would provide back-office support and management until The Collegiate Schools Foundation was established. *See* Hearing of 1/20/21, Notes of Testimony, pp. 40-41, 70-72. Because The Collegiate Schools Foundation's agreement was not finalized before the close of the record, we are left to guess about these matters.

Perhaps the most serious issue surrounding the proposed management agreement is what different roles Mr. Parnell will play. It is envisioned that he will

be the CEO of PCCSB, *see* PCCSB’s proposed finding of fact 22,² and a *non-voting* member of the Board of Trustees as set forth in the school’s by-laws. Revised Application, p. 193. *But* he is also listed as a Board of Trustees member (without a non-voting limitation noted) in the Executive Summary for the Revised Application, pp. 43-44. In addition, he is proposed to be the CEO for the Collegiate Schools Foundation. *See* Revised Application, p. 253. As noted above, *West Chester*, explained that the school must be controlled by an independent board of trustees. Relying on this teaching, the District contends that Mr. Parnell cannot be employed by a managing entity for the school and also serve on its Board of Trustees, to which the PCCSB rejoins that nothing in the CSL precludes him from being employed by both.

A major concern with the Revised Application is that after what can be described generally as a failed experiment in Baltimore, the Revised Application before CAB seeks to open a very similar school in Philadelphia. Further, although PCCSB contends that “the [r]emoval of Mr. Parnell from the Five Smooth Stones Foundation was without cause,” Reply Brief, p. 9, that claim lacks any factual support in the record.

² It is noted that although he was proposed as the person to “head the school” in the Initial Application, p. 33, in the Revised Application the person identified for this role is Malik Russell. Revised Application, p. 52.

Throughout the hearing process, Mr. Parnell showed himself to be the zealous advocate for the project and was heavily involved. Yet, as explained in the previous issue, he was, in fact, removed from oversight responsibilities at Five Smooth Stones Foundation and Baltimore Collegiate was found to be seriously lacking in several important respects. Nonetheless, through PCCSB he seeks to bring similar model to Pennsylvania. Beyond this, there is also a concern over what appear to be the conflicting roles he would play on the Board of Trustees and with PCCSB and The Collegiate Schools Foundation. Furthermore, matters are not helped by the apparently different tack taken by PCCSB at oral argument where its Counsel stated for the first time that PCCSB was *not* going to be affiliated with Baltimore Collegiate going forward. Transcript, 14. The impression is that what is being proposed by PCCSB is a moving target depending on what position it thinks it can prevail with. Given all these factors, CAB concludes that the governance structure proposed would not be consistent with the purposes of the CSL.

C. Financial Plan

Under Section 1919-A (9) an applicant is required to address the “financial plan for the charter school....” In discussing this criterion, the Commonwealth Court has stated:

[A]t the charter school application phase, the budget plan need only be detailed enough to allow the chartering authority and the CAB on appeal to “determinate that the applicant is capable of providing a comprehensive learning experience for students.” *Central Dauphin*

Sch. Dist. v. Founding Coal. Infinity Charter Sch., 847 A.2d 195, 202 (Pa. Cmwlth.) (en banc), *appeal denied*, 580 Pa. 707, 860 A.2d 491 (2004). As this Court recently stated in an unreported panel decision, “[a] financial plan only has 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.*” *McKeesport Area Sch. Dist. v. Young Scholars of McKeesport Charter Sch.*, 2015 WL 5459790 (Pa. Cmwlth., No. 373 C.D. 2015, filed July 13, 2015) (emphasis added).

Insight PA Cyber Charter Sch. v. Dep't of Educ., 162 A.3d 591, 611 (Pa. Cmwlth. 2017) (emphasis added in *Insight* opinion).

Here, the Board found numerous deficiencies in the budget information provided, including the following:

- Omission from the budget for expenditures for up to 59 Collegiate Fellows (AmeriCorps) (this omission is reflected in the budget only for year one)
- Omission from the budget for expenditures for transportation costs of special education students and extracurricular and staff activities
- Omission from the budget of expenditures for various business services including those provided by EdOPs and non-management expenses for The Collegiate Schools Foundation
- Reliance on \$950,000 in revenue from unidentified sources
- Reliance of \$600,000 from federal grants that have not been awarded
- Underestimate of cost for health care coverage for all employees (*e.g.*, \$4,401.36 of Medical Insurance for year one with 100 employees)

- Lack of knowledge of lease terms
- Underbudgeting of principal's salary (listed as \$100,000 for year one)

Decision on Revised Application, pp. 50-51.

PCCSB argues that, nonetheless, its financial plan meets the standard set forth in *Insight*.

CAB concludes that it is highly significant that the proposal reflects PCCSB's reliance on \$950,000 in revenue from unidentified sources, its reliance of \$600,000 from federal grants that have not been awarded and its underestimate of cost for health care coverage for all employees. These predicted shortfalls are nowhere satisfactorily addressed. Nor are the assumptions that these funding sources will come through "reasonable," as required by *Insight* and *McKeesport*. Accordingly, this factor is also a basis to deny the Revised Application. Thus, the Revised Application fails on this basis, as well.

V. Conclusion

For the foregoing reasons the Revised Application will be denied.³

³ Having found three significant deficits in the Revised Application, it is unnecessary to discuss the other basis for which the Board denied it. See *Shenango Valley Regional Charter School v. Hermitage School District*, 756 A.2d 1191 (Pa. Cmwlth. 2000).

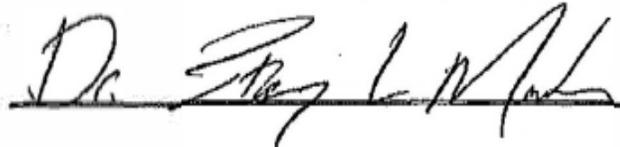
**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
STATE CHARTER SCHOOL APPEAL BOARD**

Philadelphia Collegiate Charter School for Boys, Petitioner	:	
	:	
	:	
	:	CAB Docket No. 2022-05
v.	:	
	:	
	:	
School District of Philadelphia, Respondent	:	

ORDER

AND NOW, this 20th day of November 2023, based upon the foregoing, the State Charter School Appeal Board, unanimously⁴ finds that Philadelphia Collegiate Charter School for Boys’ Revised Application for a charter to operate a school within the School District of Philadelphia is insufficient under the requirements set out in the Charter School Law, and Philadelphia Collegiate Charter School for Boys’ application is **DENIED**.

For the State Charter School Appeal Board



Dr. Stacey Marten
Chair

⁴ At the October 17, 2023, meeting, Members Marten, Faustman and Killion voted to deny; Members Schwartz and Mumin were absent.

For Petitioner: Patricia A. Hennessy, Esq.
Adam A. Attia, Esq.
Barton Gilman, LLP
1617 JFK Boulevard
20th Floor, Suite 2007
Philadelphia PA 19103
phennessy@bglaw.com
aattia@bglaw.com

For Respondent Allison Petersen, Esq.
Levin Legal Group, P.C.
1800 Byberry Road, Suite 1301
Huntingdon Valley, PA 19006
apetersen@levinlegalgroup.com

Docket Clerk: State Charter School Appeal Board
Pennsylvania Department of Education
607 South Drive, 3rd Floor
Harrisburg, PA 17120-0600
RA-EDCHARTERBOARD@pa.gov

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