

**HARRISBURG CITY SCHOOL DISTRICT
BOARD OF SCHOOL DIRECTORS**

**IN RE: KEY CHARTER SCHOOL OF HARRISBURG
REVISED CHARTER SCHOOL APPLICATION**

ADJUDICATION

The Board of School Directors (“Board”) makes this Adjudication regarding the Revised Application (“Revised Application”) filed with the Harrisburg City School District (“School District”) by the applicants for the Key Charter School of Harrisburg (“the Charter School”). The Revised Application has been denied for the reasons that follow.

I. Findings of Fact

1. On November 15, 2013, the applicant for the Charter School filed an Application (“Application”) with the School District. (KEY 1-994).¹
2. The School District held two public hearings on the Application, the first occurring on December 18, 2013 and the second occurring on January 29, 2014. The public hearings were stenographically recorded.²
3. Pursuant to Section 1717-A(e)(2)(i) of the Charter School Law, the Board afforded an opportunity for public comment at both hearings.
4. On February 24, 2014, the Board denied the Application by a vote of 8-0, and adopted an Adjudication (“Adjudication”) in support of the denial. Counsel for the District notified

¹ The record in the proceeding on the initial Application will be referred to by the Bates Stamped number beginning with the prefix “KEY __”. The record in the instant proceeding on the Revised Application will be referenced as “KEY REV __”.

² The Notes of Testimony from these two hearings will be referred to as “12/18/13 N.T. __” and “1/29/14 N.T. __”, respectively.

the applicant, the Department of Education and the State Charter School Appeal Board of the denial by way of a letter dated February 26, 2014.

5. The applicant submitted the Revised Application to the Board on April 9, 2014.
6. The School District held a public hearing on the Revised Application on May 22, 2014, which was stenographically recorded and will be referenced as “5/22/14 N.T. ____”.
7. The Board afforded an opportunity for public comment at the May 22, 2014 hearing.
8. The applicant was provided an opportunity to make a closing presentation to the Board at the May 22, 2014 hearing, but declined to do so. (5/22/14 N.T. 60-61).
9. The Board provided the applicant with the opportunity to submit – by June 6, 2014 – proposed findings of fact and conclusions of law and answers to certain questions that the applicant representative could not answer at the May 22, 2014 hearing. (5/22/14 N.T. 16, 60-63). However, the applicant did not submit any such document or additional information to answer the questions posed by the Board at any time following the May 22, 2014 hearing.
10. The complete record before the Board is as follows:
 - a. The record from the initial Application review (KEY 1-1103);³
 - b. Transcripts from the December 18, 2013 and January 29, 2014 hearings;
 - c. The Revised Application (KEY REV 1-2979);
 - d. School District Exhibit No. 1, Powerpoint by William Gretton, submitted at the May 22, 2014 hearing (KEY REV 2980-2983);
 - e. School District Exhibit No. 2, Report by Sherry Roland-Washington, submitted at the May 22, 2014 hearing (KEY REV 2984-2987);

³ To the extent information from the initial Application remains relevant in light of changes or additions addressed in the Revised Application, such information will be noted below.

- f. School District Exhibit No. 3, Report by Barbara Hasan, submitted at the May 22, 2014 hearing (KEY REV 2988-2991);
- g. Proof of advertisement of the May 22, 2014 hearing (KEY REV 2992); and
- h. Transcript from the May 22, 2014 hearing.

General Information

- 11. The name of the proposed charter school is the Key Charter School of Harrisburg. (KEY REV 9).
- 12. Simultaneously with the submission of the original Application, the applicant submitted a charter school application for a separate charter school in the Reading School District.
- 13. The Charter School seeks a five-year charter for the school years 2014-2015 through 2018-2019. Within those years, the Charter School intends to open in Year 1 with 614 students in grades K-9. (KEY 37; KEY REV 2685). In the following years, the Charter School intends to enroll the following number of students in the following grades: 834 students in grades K-10 in the 2015-2016 school year; 1032 students in grades K-11 in 2016-2017 school year; and 1120 students in grades K-12 in the 2017-2018 and 2018-2019 school years. (*Id.*).
- 14. The applicant intends to open in the 2014-15 school year, the start of which is less than one month away. Students are anticipated to begin attending the Charter School in August 2014.

Curriculum and Educational Program

- 15. Several of the deficiencies raised in the Adjudication related to the curriculum and instructional program proposed for the Charter School.
- 16. The educational program of the school is discussed at KEY REV 11-76.

17. Apparently in response to the deficiencies raised in the Adjudication, the Charter School also submitted various commercial documents from textbook and program vendors, such as Pearson, Gradpoint, Prentice-Hall, enVision Math, Foss and TCI, in the Revised Application that purport to show the alignment of the textbooks with the Common Core Standards. (*See* KEY REV 192-558, 653-2256).
18. The applicant intends to use multiple instructional programs, practices and assessments, including but not limited to: Reggio Emilia (K-2); Workshop Approach (K-8); NWEA/MAP assessments; mClass/DIBELS; Expeditionary Learning (3-8); Blended Learning using Flex Model and online Gradpoint by Pearson (9-12); online, 1-1, small group and whole group instruction (9-12); Project-based Learning (K-12); Honors and Advanced Placement coursework (9-12); block scheduling (9-12); and credit recovery and dual enrollment (9-12). (KEY REV 11-56).
19. Curriculum development at the Charter School is anticipated to occur between March 2014 and August 2014, according to a timetable submitted with the Revised Application. (KEY REV 2964).
20. No professional development plan was provided in the Application. A listing of professional development opportunities in August 2014-February 2015 was provided on KEY REV 2935-2936, which includes 10 days of professional development in August prior to the start of the school year. The identity of the person(s) providing the professional development was not disclosed.
21. No teacher induction materials were provided with the Application.
22. Sherry Roland-Washington, the School District's School Improvement Administrator, who performed the initial review of the Charter School's Application, reviewed the

Charter School’s Revised Application to determine if the applicant had adequately and appropriately addressed the concerns that were raised. Ms. Roland-Washington provided a review of her findings to the Board at the May 22, 2014 hearing. (KEY REV 2984-2987; 5/22/14 N.T. 44-53). Her findings, which are found to be credible and supported by the record, were as follows:

- a. The information and documents that were provided did not include all of the aspects of a comprehensive curriculum framework as defined by the Pennsylvania Department of Education (“PDE”) with respect to the Standards Aligned System (“SAS”), which should consist of six components: clear standards, fair assessments, curriculum framework, instruction, materials and resources and interventions/acceleration. (KEY REV 2984-2985).
- b. No local-developed curriculum maps were provided for any subject matter or grade, as defined by the PDE SAS portal, or by Grant Wiggins, Jay McTighe or Heidi Jacob-Hayes, national researchers who have defined the curriculum maps model. (KEY REV 2984-2985; 5/22/14 N.T. 48).
- c. No lesson plans were provided for any subject matter or grade. (KEY REV 2984).
- d. The commercial resources and documents citing how each text is aligned to the PA Core and National Common Core Standards are not curriculum maps. (KEY REV 2985; 5/22/14 N.T. 45, 48).
- e. The Revised Application lacks a “clear, aligned description of what Key Charter School of Harrisburg’s curriculum outcomes are, what the Key Charter School of Harrisburg teachers will specifically teach, when they will teach the identified skills, and how they will accomplish the learning outcomes aligned to a

curriculum map they plan on deconstructing after the start of the school year.”
(KEY REV 2984).

- f. Deconstructing the State standards in order to create a curriculum map is a serious undertaking which is not feasible to be conducted in a few days prior to the start of a school year, particularly given the large amount of programs and resources that the Charter School would be utilizing. (5/22/14 N.T. 45).
- g. Despite the fact that the State began utilizing the Keystone Exams as the system of assessment for 11th graders in 2013, the Revised Application represents that 11th graders at the Charter School would demonstrate mastery of the PA Standards in Reading and Math through the PSSA. (KEY REV 53, 2984).
- h. In terms of diagnostic assessments, the applicant identified Gradpoint, NWEA (MAPS) and DIBELS; however, the professional development identified in the Revised Application for these (and other programs) are not sufficient. For example, one day is set aside for NWEA (MAPS) training on September 26, 2014, but that is not a sufficient amount of time to properly train all teachers, administrators or IT folks to implement that assessment tool, as described in the Revised Application. As a result, the Charter School’s ability to implement the RtII program discussed in the Revised Application will be adversely affected, because the data dialogue necessary for the RtII process would not be able to occur. (KEY REV 2984). The MAPS training is, at a minimum, a 3-day training or 2 days and 10 hours online for a blended training. (5/22/14 N.T. 47).
- i. The applicant failed to provide a coherent, aligned plan of how the various instructional models proposed (e.g. Sheltered Instruction Observation Protocols

(“SIOP”), constructivist teaching methods, project-based learning, inquiry based learning and Reggio Emilio) would be systematically implemented across the curriculum and grade levels. (KEY REV 2985).

- j. As initially found in the review of the Application, the Revised Application also does not address the implementation of PDE’s Student Learning Objectives (“SLO”) initiative, which requires the curriculum to first be in place. (KEY 1076; 1/29/14 N.T. 200; KEY REV 2985; 5/22/14 N.T. 49).
- k. The technology necessary to adequately administer the online MAPS diagnostic assessments and Gradpoint courses/assessments across the proposed student body was not evident. The MAP assessments will be utilized in grades K-12. (KEY REV 42-43). Although the school will purchase 100 laptops for the 9th graders and staff, only 50 other desktop computers will be available to serve the rest of the student body, which is projected to be over 550 students in grades K-8 in year one. (KEY REV 50, 2685, 2986).
- l. Information provided by the applicant about the use of the Reggio Emilio approach with students in the Baltimore City schools did not show evidence of improved learning. (KEY REV 2987).
- m. The applicant made representations about the use of Gradpoint, not only as part of a blended learning program, but also for credit recovery, dropout prevention and for alternative education. There is no evidence that the Charter School or the applicant has been approved as an alternative education provider in Pennsylvania. (KEY REV 2987).

- n. The professional development opportunities listed in the Revised Application are neither realistic nor sufficient given the significant number of programs, models, resources and assessment systems that will need to be implemented. (KEY REV 2987; 5/22/14 N.T. 51-52). Ms. Roland-Washington provided some examples of the inadequacy of the time allotted for adequate training on Powerschool, SIOP, restorative justice and MAPs. (*Id.*).
23. The incidence of ELL students in the School District is 33%. (1/29/14 N.T. 199).
24. Only one English as a Second Language (“ESL”) teacher for grades K-12 is listed in the Revised Application and the budget documents (KEY REV 2807), the sufficiency of which was questioned by Ms. Roland-Washington given the high incidence of ELL students in the School District, the different ESL levels that will be present within the student body and the time requirements that must be met under the WIDA model. (KEY REV 2985; 5/22/14 N.T. 49). If the Charter School’s ELL incidence mirrors that of the School District, the Charter School will have approximately 200 ELL students in the 2014-15 school year alone in grades K-9 who would be serviced by only one ESL teacher.

Community Support

25. Ken Cherry is the founder of the proposed school. (KEY REV 2687). Mr. Cherry does not live in the School District. (1/29/14 N.T. 113).
26. The Revised Application identifies six (6) founding board members of the Charter School: Patricia Petrosino, Vincent Petrosino, Kendra Harvey, Kelly Garrison, Jessica Quinones and Ken Cherry. (KEY REV 2791). Patricia Petrosino and Ken Cherry do not live in the School District. (KEY REV 2791; 1/29/14 N.T. 114-115).

27. The proposed enrollment for the initial year of opening is 614 students in grades K-9. (KEY REV 2685). The proposed budget documents reflect an enrollment of 614 students from the outset of year one, with the same student projections listed in KEY REV 2685. (KEY REV 2806-2816).
28. At the first hearing on the initial Application, the applicant submitted an updated list of parents who have allegedly sought to pre-enroll their child(ren) in the Charter School. (KEY 1065-66). The list was put together by Mr. Cherry and contains the names of 142 students. (Id.; 1/29/14 N.T. 119-120). Regarding those alleged pre-enrollments:
- a. Mr. Cherry did not know what grade any of the students were in or were expected to be in during the 2014-15 school year, including whether any of them were currently in grades 9-12. (1/29/14 N.T. 121-123).
 - b. None of the information about pre-enrollments had been verified, including address or grade level. (1/29/14 N.T. 123).
 - c. Information was presented by the School District that indicated some of the students at the addresses listed had graduated and one was incarcerated. Other addresses were not located in the School District. (KEY 1081; 1/29/14 N.T. 207-208).
 - d. The applicant has not received any signed document from any parent indicating that they intend to enroll their child(ren) at the Charter School. The pre-enrollment information was submitted via the Charter School's website, which did not require anyone to attest, sign or verify any of the information that was inputted. (1/29/14 N.T. 124).

- e. Three of the board members (Mr. Cherry, Ms. Kertzel and Ms. Harvey) have children that they intend to enroll in the school, and they were each included in the list at KEY 1065-66. (1/29/14 N.T. 116).
29. In the Revised Application, the applicant represented that they now have 364 students who have “pre-enrolled” in Key, 305 of whom are allegedly residents of the School District. (KEY REV 2688, 2929). However, no information or documentation signed by any parent was provided by the applicant to support this representation, and even less information was provided about the 364 students referenced in the Revised Application in comparison to the original Application.
- a. The names of the students who propose to enroll or their parents were not disclosed; as such, that alleged support could not be compared to other support to determine if it was duplicative or if the students were residents.
 - b. The applicant did not provide addresses for any of the 364 students in order to permit the School District to verify residency.
 - c. No pre-enrollment applications or letters filled out by any parent were provided with the Revised Application to verify validity of the information.
30. The same Petition of support was included at KEY 730 and again at KEY REV 2747, which was signed by three (3) individuals on October 5, 2013. The applicant assumed that none of these individuals have any children, because none of them indicated they had any children on the form. (1/29/14 N.T. 125).
31. A second Petition of Support was submitted on December 16, 2013, and listed five (5) additional residents, only one of whom indicated he had children. (KEY 1023). This document was again submitted with the Revised Application at KEY REV 2746.

However, the petition did not indicate how old the children were or whether this resident was interested in having his children attend the Charter School.

32. Two sign-in sheets for meetings held by the applicant were included in the Revised Application.

a. The first sheet reflects that ten (10) individuals attended a community meeting on March 22, 2014, but it does not indicate if any of those individuals support the Charter School or intend to enroll their children, if any, in the Charter School. (KEY REV 2743).

b. The second sheet reflects that one (1) individual attended a “Living Room Chat and Chew” with Ken Cherry on March 27, 2014. Again, the document does not indicate if this individual supports the Charter School or intends to enroll her children in the Charter School. (KEY REV 2744).

33. Duplicative lists of persons who allegedly signed an online petition with change.org were included with the Revised Application, some of whom also provided online comments. The lists were produced at KEY REV 2689-2692, 2723-2730, and contain many of the same names. Names of individuals were provided, along with their City, State, Zip Code, Country and “Signed On” date. Full addresses were not provided for any individual. The following facts can be gleaned from these submissions:

a. 156 non-duplicative names of individuals are included between the various lists and comments.

- b. 7 individuals who signed the online petition are associated with the founding group for the school (Mr. Cherry, Ms. Kertzel, Ms. Harvey, Ms. Petrosino, Ms. Coleman-Hill, Ms. Garrison and Ms. Quinones).⁴
 - c. 1 is a “Concerned Citizen” from New York, NY whose name was not provided.
 - d. Of the remaining 147 names, 51 are not identified as residing in “Harrisburg”, some of whom live as far away as North Carolina, Texas, Florida, Wyoming, Puerto Rico and Italy. (*Compare* KEY REV 2725-2730 with 2989-2990).
 - e. It is not known if the remaining 96 signers are, in fact, residents of the School District because none of them provided complete addresses.
 - f. Of the Harrisburg residents who signed this petition, 33 of them do not have children or school-aged children, 1 has a child who already graduated and 3 have children who are incarcerated in juvenile rehabilitation programs. (KEY REV 2990; 5/22/14 N.T. 58).
34. Nineteen (19), non-duplicative form “Statements of Support” were provided with the Revised Application that appear to come from the applicant’s website. (KEY REV 2748-2767).
- a. Two of the form Statements were from founders of the school. (Ms. Kertzel – KEY REV 2748; Mr. Cherry – KEY REV 2754).
 - b. According to Barbara Hasan, only 10 of the individuals who submitted Statements of Support are residents of the School District. (KEY REV 2989). Some of the Harrisburg addresses are actually located in surrounding school districts. (Id.).

⁴ Ms. Kertzel and Ms. Coleman-Hill were identified as founders or board members in the original Application (KEY 41-42), but appear to have been removed as founders in the Revised Application; regardless, neither of them reside in the School District. Ms. Kertzel lives in York and Ms. Coleman-Hill resides in Sinking Spring in Berks County.

- c. None of the forms are signed by anyone or verified to know if the Statement of Support was actually submitted by the person whose name appears in the electronic form.
35. No letters of support (other than the form Statements) for the Charter School from local businesses, elected officials, residents or community members were submitted with the original Application or the Revised Application.
 36. Ken Cherry, the applicant for the school, is the proposed CEO of the Charter School. (1/29/14 N.T. 104). Although the Revised Application indicates that 126 individuals have applied for employment in some capacity (KEY REV 2689), no individuals besides Mr. Cherry were identified for employment in the Revised Application. The resumes of those individuals were not included in the Revised Application.
 37. The applicant does not propose to utilize a management company. (1/29/14 N.T. 106).
 38. No evidence of the formation of any partnerships with any community groups was provided by the Charter School.
 39. One individual appeared at the May 22, 2014 hearing and spoke in favor of the proposed school during the public comment period. (5/22/14 N.T. 11-13).
 40. Barbara Hasan, the Assistant to the Superintendent, reviewed information in the Revised Application pertaining to community support. (KEY REV 2988-2991). She noted that the applicant had a website, Facebook page and Twitter account that did not differentiate between Key Charter School of Harrisburg and the proposed Key Charter School of Reading. (KEY REV 2991). One of the matters noted by Ms. Hasan was that the applicant had not completed a significant amount of direct outreach to parents in the community to ensure that the program would be successful, considering that the applicant

wanted to open in August 2014 and it was almost June at the time of the hearings. (KEY REV 2991; 5/22/14 N.T. 59).

Facility Issues

41. The school will be located at 2200 Market Street, Harrisburg, the site of the former Bishop McDevitt High School. (KEY REV 2685).
42. The original Application stated: “A loan will be secured via the Reinvestment Fund of Philadelphia. Repayment of the loan will not occur until post renovations. Only interest payments will be made during capital improvements to the school.” (KEY 51). However, no documentation was submitted to indicate whether the Reinvestment Fund (“TRF”) was willing to issue a mortgage or loan to the applicant to purchase the property or to cover the cost of the renovations. Nor was information submitted from TRF delineating what the repayment terms would be for such a loan, including the amount of the loan, the monthly or annual repayments, the term of the loan or any other information. The original Application referenced a “10 year mortgage” and “budgeting \$240,000 per year for repayment purposes” (KEY 51), but there no information was provided to support those figures. The applicant did not know what the repayment terms would be for such financing because of the potential renovation costs that would be rolled into the mortgage or loan with TRF. (1/29/14 N.T. 135-136).
43. TRF is still identified in the Revised Application as the lender (KEY REV 2799); however, no documentation or letters from TRF (or other lender) were provided in the Revised Application and the applicant did not address any of the issues and concerns raised by the School Board in the Adjudication regarding the loan or repayment terms. (5/22/14 N.T. 36).

44. An agreement of sale with the Diocese of Harrisburg was provided with the original Application. (KEY 1008-1021). The purchase price of the building was identified as \$1,775,000.00. (*Id.*). Ken Cherry signed the agreement on behalf of Key Charter School, even though that entity had not been incorporated as of that date. (KEY 1017).
45. Mr. Cherry stated at the second hearing that renovation costs may be \$3 million, which would be rolled into the mortgage. (1/29/14 N.T. 175-176).
46. The Revised Application notes that major renovations to the building include: new roof, new windows, installation of HVAC system, wiring for networking system and lighting upgrade. (KEY REV 2798). All of these renovations would need to be completed to the building before school can open. (5/22/14 N.T. 26). The applicant does not have a timetable for the completion of those renovations. (*Id.*).
47. Although the applicant did not identify this in the Revised Application, the building proposed to house the Charter School is filled with asbestos in the piping, flooring, possibly ceiling and within the HVAC system, given that portions of the building were built in the 1920s, 1950s and in 1962. (5/22/14 N.T. 39). An environmental report produced with the Revised Application indicates that asbestos is present in the facility. (KEY REV 2841-2854). According to William Gretton, the asbestos abatement process is extensive and must be completed under guidelines and rules of the government. (5/22/14 N.T. 40).
48. At the May 22, 2014 hearing, the applicant admitted that the asbestos would need to be removed before the start of the school year. (5/22/14 N.T. 26). The applicant was not sure if an asbestos study had been completed as of May 22, 2014, or if it had received information from any contractor regarding how long it will take to perform the

renovations or improvements, including the asbestos removal.⁵ (5/22/14 N.T. 27, 43). No asbestos abatement study or plan was provided with the Revised Application and no cost for this undertaking was budgeted or addressed in the Revised Application. (5/22/14 N.T. 41-42).

49. Mr. Gretton noted that the applicant represented that they would comply with all standards for purchasing and bidding that school districts must comply with, but they had not taken steps to follow those procedures to deal with the asbestos and renovations as of May 22, 2014, when the school was proposed to open to students in August 2014. (5/22/14 N.T. 42).

50. No architectural drawings were supplied with the Revised Application to show how the building would be renovated to accommodate the different grade structures (K-12) and the needs of those populations, in light of the fact that the proposed facility previously housed high school grades only. (5/22/14 N.T. 40).

51. The agreement of sale included several special clauses, which were agreed to by Mr. Cherry by virtue of his signature. (KEY 1016). One of those clauses stated as follows: “There will be a restriction placed on this property that the property will not be used for any purpose contrary to the teachings of the Roman Catholic Church for a period of three (3) years from the date of settlement.” (KEY 1016).

52. The Revised Application did not address the concerns noted by the School Board in the Adjudication regarding the agreement of sale clauses. An amended agreement of sale was not provided, and the applicant did not amend or otherwise address the concern

⁵ The applicants were advised to provide such information to the School District no later than June 6, 2014, for any question that it could not answer at the May 22, 2014 hearing. (5/22/14 N.T. 43). However, no information was provided by the applicants after the May 22, 2014 hearing.

noted about the restrictions on the use of the property. No information was submitted to show that the Diocese had waived this requirement. (5/22/14 N.T. 39).

Financial Planning Requirements

53. The Board found the budgetary documents submitted by the applicant with the Application to be deficient as part of its Adjudication. (Adjudication at 31-32).

54. The applicant revised the budget documents in the Revised Application and, according to William Gretton, the School District's Interim Business Manager, the budget documents were "much improved" from the original submission. (5/22/14 N.T. 33-34).

55. However, the budget form still does not contain any revenue data indicating origin of revenue sources other than local revenue. (KEY REV 2807; 5/22/14 N.T. 34).

56. The applicant represented that \$250,000 in start-up funding for the Charter School would be provided by the Reinvestment Fund, and that they would also be seeking grant money from the Department of Education. (1/29/14 N.T. 128-131). No information was provided indicating that the Reinvestment Fund was willing to loan them any money for start-up costs or that there was any certainty of obtaining grant money. Although a December 2, 2013 letter from Molly Melloh, a Loan Officer with the Reinvestment Fund, was included, the letter does not indicate that the Reinvestment Fund has agreed to provide any funding to the applicant; it simply states that they had "received preliminary information about this project and we would be pleased to receive a full application for financing from the school." (KEY 1019). The Revised Application did not address this concern. (5/22/14 N.T. 37).

57. William Gretton, the School District's business consultant, reviewed the Revised Application with respect to operations and services, budget and finances and facility and

maintenance. (KEY 2980-2983; 5/22/14 N.T. 33-43). Mr. Gretton's report and testimony are found to be credible and indicated as follows:

- a. The budget still does not comply with the PSERS projected percentages for the next five years, resulting in the Charter School under-budgeting expenditures due to PSERS in the amount of \$1,354,698 over the course of five years. (5/22/14 N.T. 35).
- b. The Charter School has underestimated the percentage increase in the cost of health care benefits over the course of the requested charter by only budgeting for health care costs to increase by a total of 12% over the course of five years. That is inconsistent with reality, where in some years the School District has had 12% increases from one year to the next, and will result in budgetary shortfalls for the Charter School. (5/22/14 N.T. 35-36).
- c. In the budget documents, the applicant assumes a total enrollment of 614 students from day one of the Charter, which would be from July 1, 2014, and then full enrollment at the projections included in the Revised Application thereafter. There is no data to support that assumption, particularly given the alleged pre-enrollment numbers for the school, and Mr. Gretton questioned the accuracy of the budget documents as a result. (5/22/14 N.T. 37-38).
- d. The cost of utilities was less than \$1/square foot, which was underestimated given the age of the facility they are proposing. (5/22/14 N.T. 41).

Governance Issues

58. The Adjudication found as a deficiency that Articles of Incorporation have not been filed with the Department of State to establish the proposed Charter School. (Adjudication at

25-26). The applicant did not submit Articles of Incorporation with the Revised Application.

II. Discussion

The Charter School Law (“CSL”), Act of June 19, 1997, P.L. 225, as amended, 24 P.S. §17-1701-A *et seq.*, mandates that “[a] charter school application submitted under the [CSL] shall be evaluated by the local board of school directors based on criteria, including, but not limited to,” the following:

1. The demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the public hearing;
2. The capability of the charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the adopted charter;
3. The extent to which the application addresses the issues required by the Charter School Law; and
4. The extent to which the charter school may serve as a model for other public schools.

24 P.S. §17-1717-A(e)(2).

The CSL requires that charter school applications address the following issues:

1. The identity of the applicant;
2. The name of the proposed charter school;
3. The grade or age levels served by the school;
4. The proposed governance structure, 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. An admission policy and criteria for evaluating the admission of students that complies with the CSL;
7. The procedures that will be used regarding the suspension or expulsion of pupils;
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 that will be made for auditing the school;
10. Procedures to review parent complaints regarding the operation of the school;
11. A description of and address of the physical facility in which the charter school will be located, the ownership of the facility, and the lease arrangements;
12. Information on the proposed school calendar, including the length of the school day and school year;
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 student in extracurricular activities with the school district;
15. A report of criminal history record for all individuals who shall have direct contact with students;
16. An official clearance statement from the Department of Public Welfare; and

17. How the charter school will provide adequate liability and other appropriate insurance for the charter school, its employees and the board of trustees of the charter school.

24 P.S. §17-1719-A.

The State Charter School Appeal Board (“CAB”) has opined that “[i]t is the charter school applicant, rather than the District, that has the burden to establish by sufficient and competent evidence that it has met the requirements of the CSL.” *In re: Washington Classical Charter School v. Trinity Area School District*, CAB No. 2012-05, at 9 (decided April 16, 2014).

Against this backdrop, the Revised Application will be examined.

III. Analysis Under the CSL

A. The Applicant Has Not Demonstrated Sustainable Support for the Charter School Plan by Teachers, Parents, Other Community Members and Students.

One of the deficiencies found by the Board with respect to the initial Application was the community support for the proposed school. The demonstrated support for the proposed charter school plan continues to be insufficient, which is again found to be a deficiency for the Revised Application.

Section 1717-A(e)(2)(i) of the CSL requires the applicant to demonstrate “sustainable support for the charter school plan by teachers, parents, other community members and students” within the community where the charter school is to be located. 24 P.S. § 17-1717-A(e)(2)(i). “Sustainable support” has been defined by CAB as “support sufficient to sustain and maintain a proposed charter school as an ongoing entity.” *Bear Creek Community Charter School*, CAB No. 2003-3; *Ronald Brown Charter School*, CAB No. 1999-1. Sustainable support is “an inherent variable based upon the size of the proposed school, the size of the community and other factors.” *Environmental Charter School*, CAB No. 1999-4. Sustainable support is measured in

the aggregate and not by individual categories. *Carbondale Area School District v. Fell Charter School*, 829 A.2d 400, 405 (Pa.Cmwlt. 2003). The appropriate measurement for sustainable support is against the initial opening and operation plan of the charter school. *Bear Creek Community Charter School*, CAB No. 2004-2 at 6-7.

The proper community to determine sustainable support is the school district in which the charter school is to be located. *Washington Classical Charter School*, CAB No. 2012-05, at 14; *Legacy Charter School*, CAB No. 2000-14. The support documents, including petitions, must clearly identify that the signers or supporters are school district residents to be considered as evidence of sustainable support. *Dr. Lorraine K. Monroe Academy Charter School*, CAB No. 2000-16. Duplicative support, wherein the same person has submitted different types of support documents, should only be considered once. *Duquesne Charter School*, CAB No. 2013-01, at 9.

In addition to the aforementioned concepts, charter schools are mandated to develop and implement strategies for meaningful parent and community involvement. 24 P.S. § 17-1715-A(2). Section 1719-A(8) requires applications to contain, *inter alia*: “[i]nformation on the manner in which community groups will be involved in the charter school planning process.” 24 P.S. § 17-1719-A(8). Whether or not an applicant has developed any community partnerships as of the time of the application is a valid consideration relating to its community support. *Duquesne Charter School Founding Group d/b/a/ Duquesne Charter School v. Duquesne City School District*, CAB No. 2013-01, at 8, n.1 (hereinafter referenced as “*Duquesne Charter School*”).

Here, Key Charter School will be located within the Harrisburg City School District. Based upon the case law from CAB, that is the community from which the evidence of support must come. Only four of the proposed board members live in Harrisburg. No letters of support

from Harrisburg community groups, elected officials or businesses were provided. No community partnerships have been created to date by the applicant for services to the Charter School and its proposed student body. Only a few community meetings have been held to date, with only a few attendees at each session.

Only 8 people physically signed a petition of support for the school. 10 non-duplicative electronic “form” Statements of Support were submitted from Harrisburg residents, but the applicant had no way to verify that the person submitting the electronic statement on the website was actually the person they claimed to be, or that they were supporting the Key Charter School of Harrisburg, as opposed to the Key Charter School of Reading. Lists of people who supposedly signed an online petition at change.org was submitted, but only 96 of the names included a “Harrisburg” address; however, because incomplete addresses were provided (no street or numbers), it could not be determined whether all of the “Harrisburg” addresses were actually within the Harrisburg School District. The School District was able to determine that at least 33 of the 96 individuals with “Harrisburg” addresses do not have children in the school system, if they have children at all.

The applicant intends to enroll 614 students in grades K-9 in its first year of operation. Only enrollment letters with age-eligible children for the grades to be served by the proposed school should be considered. *Duquesne Charter School*, CAB No. 2013-01, at 9. The applicant contends that it has 305 age-appropriate Harrisburg residents pre-enrolled in its school; however, the applicant did not supply any documentation to confirm that averment. The names of students or their parents/guardians were not provided, nor were their addresses. No pre-enrollment applications or letters from any parent were provided. In this case, the applicant actually provided less information in the Revised Application regarding its alleged pre-enrollments than it

had supplied in the original Application. Thus, the School District cannot determine who desires to enroll in this school or verify the representations of the applicant.

Other than Mr. Cherry, the applicant did not identify a single proposed employee for the school. Only one individual not associated with the founding group spoke in support of the applicant at the hearing, and the May 22, 2014 hearing was sparsely attended.

Reviewing all of the submitted evidence of community support in the aggregate, the applicant has not met its burden of showing sustainable support for the proposed school. The Board finds that there is insufficient sustainable support for the Charter School's intended enrollment of 614 students in year one and for the overall charter school plan set forth in the Revised Application as required by Section 1717-A(e)(2)(i) of the CSL.

B. The Applicant Has Not Shown That It Is Capable, In Terms Of Support And Planning, To Provide Comprehensive Learning Experiences To Students Pursuant To The Adopted Charter.

The CSL requires charter school applications to demonstrate “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.” 24 P.S. § 17-1717-A(e)(2)(ii). A review of the Charter School's Revised Application establishes that the applicant has not demonstrated, based upon its support and planning, the capability of providing a comprehensive learning experience to students. The following matters raised in the Board's February 24, 2014 Adjudication have not been adequately addressed in the Revised Application.

Governance Structure

A charter school must be operated as a non-profit entity. 24 P.S. § 17-1703-A. To determine whether a charter school will be operated in accordance with the CSL, the appellate courts in Pennsylvania require a review of several different types of documents: the articles of

incorporation filed by the applicant; the proposed Bylaws of the school; and the management agreement between the applicant and any proposed management company. *Carbondale Area School District v. Fell Charter School*, 829 A.2d 400, 407-408 (Pa.Cmwlth. 2003). Here, the applicant is not proposing to utilize a management company, so a management agreement is not required.

Although Bylaws were submitted with the Application, the Charter School did not submit Articles of Incorporation (“Articles”) with either the initial Application or the Revised Application. This is a continuing deficiency in the Revised Application, as a Charter can only be granted to a non-profit corporation.

This issue reflects a continued lack of proper planning or a lack of understanding of the legal requirements governing the Charter School’s operations and forms a basis for the Board’s denial of the Revised Application.

Curriculum and Educational Program

Another deficiency raised in the Adjudication that was not sufficiently addressed by the applicant in the Revised Application was the curriculum. The proposed curriculum for a charter school must, *inter alia*, show how the applicant will offer comprehensive planned instruction to fulfill Chapter 4 requirements, how the particular subject areas will meet Pennsylvania standards, and how the applicant will deliver special education services to students with disabilities. *Bear Creek Community Charter School*, CAB No. 2003-3. This is required in order to show how the proposed charter school will offer comprehensive learning experiences to its students as required under Section 1717-A(e)(2)(ii).

The applicant has not provided a written curriculum framework as described by the Pennsylvania Standards Aligned System. No curriculum maps or scopes and sequences have

been submitted delineating courses to be offered and how those courses will meet the requirements of 22 Pa. Code Ch. 4.

“The curriculum of a school, any school, is one of the most significant building blocks of the educational program at that institution. To not have the curriculum completed and fully aligned shows a lack of adequate planning.” *Thomas Paine Charter School*, CAB No. 2009-04, at 9. The curricular materials must also address the nontraditional elements of the Charter School and how those elements will be integrated into the curriculum; failure to do so will render the curriculum insufficient. *In re Appeal of Community Service Leadership Development Charter School*, CAB No. 2010-02, at 11, citing *In re David P. Richardson Academy Charter School*, CAB No. 2001-08. The charter school’s failure to provide a sufficient curricular plan is a basis for denial of an application, as that plan must be fully developed at the time the application is filed. *Environmental Charter School at Frick Park*, CAB No. 2007-05, at 6-7.

In addition, the complete curriculum plan must be submitted to determine if the proposed charter school could be a model for other public schools. *Duquesne Charter School*, CAB No. 2013-01, at 9, citing *In Re: Environmental Charter School*, CAB No. 1999-14, at 21. An applicant would not be a model for other public schools if the curriculum submitted was not fully developed. *Duquesne Charter School*, CAB No. 2013-01, at 12.

The Pennsylvania Department of Education has interpreted the CSL requirements (with respect to cyber charter school applications) as requiring: (1) curriculum maps to be provided delineating the curriculum to be offered at every grade level and in every subject area and showing how it meets the requirements of Chapter 4; and (2) the articulation of how planned instruction aligned with academic standards would be provided in the areas of assessment and resources. See e.g. *V3 Academy Cyber Charter School*, at 6 (1/28/11 decision signed by Carolyn

Dumaresq, Deputy Secretary, Office of Elementary & Secondary Education); *Mercury Online Charter School of PA*, p. 6; *Urban Cyber Charter School*, at 8 (both of which are 1/28/13 decisions signed by Ronald J. Tomalis, Secretary of the Pennsylvania Department of Education).

The curricular and educational program description provided in the Revised Application is akin to the limited information provided in the *Duquesne Charter School* case, wherein CAB denied the application. In that case, the applicant addressed its proposed curriculum and educational program in approximately 10 pages within the application and in some addenda attached to the application. Only lists of proposed classes were provided, with no further explanation of the content of each course or references to alignment of those courses to Pennsylvania standards in each of the grade levels to be offered. *Id.* at 11-12. Duquesne Charter School also admitted that the application provided an overview of what it would like to do with the educational program and that the curriculum would be created in the future. *Id.* at 12. CAB ultimately determined that the “lack of a concrete curriculum plan” supported the denial of the charter application. *Id.* at 11, n. 2. *Cf. Propel Charter School – Hazelwood v. Pittsburgh School District*, CAB No. 2013-02, at 7 (10/18/13) (CAB granted charter application, finding the several thousand pages of comprehensive curricular documents demonstrated alignment with the state standards and significant support and planning).

Here, the applicant supplied a description of the programs, resources and texts that it would use, along with various commercial documents showing the alignment of the texts with various standards, but no comprehensive and coherent curriculum (as that is defined by PDE SAS) was provided to show how the courses and subject matters taught by the Charter School would be aligned with the State standards. Neither a curriculum framework nor curriculum maps was provided, and the Revised Application clearly indicated that the curriculum had not yet been

prepared by the applicant. The timetable indicated that the curriculum would be completed between March and August 2014. Given that this Charter School desires to open for staff and students in August 2014, it is extremely problematic that the curriculum was not completed prior to the submission of the Revised Application.

All of these observations cause the Board to conclude that the applicant has not met its burden to establish sufficient preparation in terms of curriculum and planning to offer a comprehensive learning environment to Harrisburg students. The curriculum documents submitted do not evidence that the applicant is prepared to offer comprehensive planned instruction to fulfill the mandates of Chapter 4. See *Bear Creek Community Charter School*, CAB No. 2003-3; *Environmental Charter School*, CAB No. 1999-14 (denial of application upheld where the proposed curriculum does not show either the planning or the specificity that would assure students would receive a comprehensive learning experience).

ESL

Charter schools are required to “provide a program for each student whose dominate language is not English for the purpose of facilitating the student’s achievement of English proficiency and the academic standard under § 4.12 (relating to academic standards). Programs under this section shall include appropriate bilingual-bicultural or English as a second language (ESL) instruction.” 22 Pa. Code § 4.26. The Basic Education Circular published by the Pennsylvania Department of Education, *Educating Students with Limited English Proficiency (LEP) and English Language Learners (ELL)*, 22 Pa. Code § 4.26, states that each local educational agency must have a written Language Instructional Program that addresses key components, including a process for identification, placement, exit and post-exit monitoring;

instruction model used; curriculum aligned to PA standards; and administration of annual proficiency and academic assessments.

The Charter School failed to provide sufficient evidence of an ESL program that is appropriate for the education of ELLs. Although the applicant has now indicated that it will hire one ESL teacher, one ESL teacher is insufficient for the proposed population in light of the School District's incidence of ELL is 33. The failure to properly anticipate staffing needs to accommodate the learning needs of the anticipated population of ELL students is a continued deficiency in the Charter School's planning.

Financial Planning

An item that must be addressed in the application and which is relevant to the determination whether the proposed school has the capacity to provide comprehensive learning experiences pursuant to Section 1717-A(e)(2)(ii) is the school's financial planning. *Bear Creek Community Charter School*, CAB No. 2003-3. A charter school is required to submit a budget that provides a sufficient basis from which to conclude that the charter school has considered fundamental budgeting issues and has determined that it will have the necessary funds to operate. *Thomas Paine Charter School*, CAB No. 2009-04, at 12; *Voyager Charter School*, CAB No. 2005-09. Deficiencies in the budget submitted by the applicant can be grounds to reject an application under Section 1717-A(e)(2)(ii). *Bear Creek Community Charter School*, CAB No. 2003-3.

Admittedly, the applicant's budgetary materials are much improved from the initial submission. However, there remains concerns about the applicant's anticipated expenditures in the areas of PSERS, health care costs, utilities and loan repayment. At this time, the applicant has not submitted sufficient information regarding its facility financing needs to establish that

reasoned planning has taken place to determine how facility debt would be re-paid. Nor can the School District evaluate the reasonableness of the proposed financing terms (e.g. length of repayment), since no such terms have been identified.

Start-up financing is also nothing more than speculative at this time. See e.g. Mercury Online Charter School of PA, at 5; Urban Cyber Charter School, p. 11; PA Career Path Cyber Charter School, at 10 (plan to fund start-up operations during the start-up period must be submitted); Akoben Cyber Charter School, at 2 (same, also noting that applicant's statement at the hearing that a line of credit would be secured was insufficient when the application itself does not mention an established line of credit or any evidence that a loan can be secured).

For these reasons, the Board finds that the budgetary planning by the applicant continues to be deficient.

C. The Revised Application Does Not Consider All Of The Information Required Under Section 1719-A.

Section 1719-A of the CSL requires the charter applicant to include certain information in its application. The Board believes that the applicant herein has again failed to properly identify several items of information as required in this section of the CSL.

1. Section 1719-A(5) – Mission And Goals Of The Charter School, The Curriculum To Be Offered And The Methods Of Assessing Whether Students Are Meeting Educational Goals.

The Board fully discussed its conclusions of the Charter School's proposed curriculum in part B above and reiterates that the submitted curricular documents in the Revised Application fails to establish that the Charter School will provide comprehensive learning experiences to enrolled students.

2. Section 1719-A(9) -- The Financial Plan For The Charter School And The Provisions That Will Be Made For Auditing The School Under Section 437.

As explained more fully above, the financial plan submitted by the Charter School remains deficient.

3. Section 1719-A(11) -- A Description Of And Address Of The Physical Facility In Which The Charter School Will Be Located, The Ownership Of The Facility, And The Lease Arrangements.

As noted in the Adjudication, the applicant provided information about the physical facility, the ownership thereof and the sales price. However, the applicant still did not address some fundamental issues regarding the facility that they are proposing to use, including the cost of the necessary renovations and remediation of environmental issues at the site and how that cost will be borne by the applicant. While the sales agreement was disclosed, no financing agreement or terms were provided, which is the factor that will affect the Charter School's operations and budgetary planning. These matters were again not addressed in the Revised Application, and the Board believes that the failure to address these issues is a deficiency in the Revised Application.

The renovations that must be performed to the facility are also a great concern from the perspective of timing and preparation. The school proposes to open in less than two months. Within that two month period, the applicant and the owner would need to settle on the building and then an asbestos removal plan would need to be put into place, which has not been completed to date according to information provided by the applicant; government approvals and contacts would need to be obtained and made; and the actual asbestos removal process for a 127,000 square foot facility would need to occur and be completed. Such a timeline is not feasible or realistic, and the applicant has not provided any information on how this could occur

or whether they have contemplated all of these issues. In addition, the other renovations – roof, windows, HVAC installation, wiring and other improvements – to various buildings that were built in the 1920s and 1950s must be completed, but no plan for how and when that would occur was provided. All of these issues are planning deficiencies, particularly since the applicant *chose* to file its Revised Application in early April 2014 without having taken the necessary steps to address these construction and operational issues (or submitting evidence of having done so), knowing that a decision could not have been made by this Board until very close in time to the start of the 2014-15 school year.⁶

Another concerning issue related to the facility is the special clause in the agreement of sale with the Diocese that prohibits the property from being used “for any purpose contrary to the teachings of the Roman Catholic Church for a period of three (3) years from the date of settlement.” This issue was raised in the Adjudication and the applicant did not take any steps to address this concern and deficiency in the Revised Application. For example, the applicant did not submit a new agreement of sale that removed this provision or changed its language; nor did the applicant attempt to explain this provision or otherwise indicate that they had made any agreement with the Diocese as to the interpretation of this language. In fact, the applicant totally ignored the concern raised with the agreement of sale. Clearly, teachings that could be construed as contrary to the teachings of the Roman Catholic Church include: evolution, sexual education or counseling or instruction about contraception. As a public school, the Charter School is required to implement the Pennsylvania curricular standards; such a prohibition directly conflicts with certain instruction that would be required in a public school. The Board finds this clause in the agreement of sale to be a continued deficiency in the Revised Application.

⁶ The CSL mandates that the decision of the School Board not be made until the first meeting after 45 days has transpired from the date of submission of the revised application. 24 P.S. § 17-1717-A(f).

4. Section 1719-A(13) – The Professional Development Plan for the Faculty

Additional information was provided in the Revised Application regarding the professional development opportunities that would be supplied to staff. However, the amount of the development opportunities referenced in that information was questioned by the School District administration, in that the amount of development is insufficient to adequately prepare staff to implement many of the initiatives, particularly in light of the numerous initiatives that the Charter School intends to implement. No detail was provided about who would provide such professional development or the resources that would be used. A teacher induction plan was also not provided, which is concerning given that the school is proposed to open with all new staff (who have not yet been hired) in less than two months.

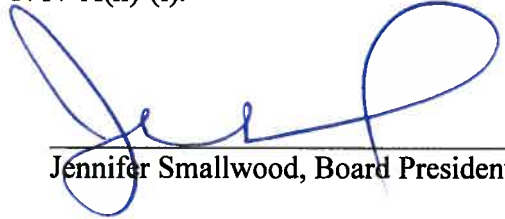
D. The Extent To Which The Charter School May Serve As A Model For Other Public Schools.

Pursuant to Section 1717-A(e)(2)(iv) of the CSL, the School District must evaluate the Charter School's Revised Application with regard to the "extent to which it will serve as a model for other public schools." 24 P.S. § 17-1717-A(e)(2)(iv). CAB has reasoned that "charter schools should improve public education." *Bear Creek Community Charter School*, CAB No. 2003-3. Upon examination and evaluation of the continued deficiencies in the Revised Application, the Board concludes that the Charter School does not have the capacity to serve as a model for other public schools for the reasons set forth above.

ORDER

For the reasons set forth above, the Revised Application to create the Key Charter School of Harrisburg is hereby **DENIED**.

The applicant may appeal this decision to the State Charter School Appeal Board in accordance with the procedures set forth in 24 P.S. § 17-1717-A(h)-(i).



Jennifer Smallwood, Board President