

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

**IN RE: KEY CHARTER SCHOOL OF HARRISBURG
2013 CHARTER SCHOOL APPLICATION**

ADJUDICATION

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

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.

¹ The record in this proceeding will be referred to by reference to the Bates Stamped number beginning with the prefix “KEY __.”

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

4. Just prior to the first hearing, on December 16, 2013, the applicant submitted supplemental documents to the Board. Those documents were included in the record. (KEY 1002-1052; 12/18/13 N.T. 10-11).
5. During the first hearing, the Board set a deadline of January 6, 2014 for the receipt of any additional supplemental materials from the applicant. (12/18/13 N.T. 51). No additional materials were submitted by the applicant by that date.
6. The complete record reviewed by the Board in making this decision is as follows:
 - a. The Application (KEY 1-994);
 - b. Correspondence regarding the application review process and the first hearing (KEY 995-1001);
 - c. Supplemental materials submitted by the applicant on December 16, 2013 (KEY 1002-1052);
 - d. Charter School Exhibit No. 1, a Powerpoint presentation from the December 18, 2013 hearing (KEY 1053-1063);
 - e. Charter School Exhibit No. 3, enrollment information submitted at the December 18, 2013 hearing (KEY 1065-1066);
 - f. Charter School Exhibit No. 2, Career Pathways information submitted at the December 18, 2013 hearing (KEY 1067-1068);
 - g. Proof of publication for the December 18, 2013 and January 29, 2014 hearings (KEY 1069-1070);
 - h. Correspondence regarding the second hearing (KEY 1071);
 - i. School District Exhibit No. 1, Curriculum Review Powerpoint, submitted at the January 29, 2014 hearing (KEY 1072-1078);

- j. School District Exhibit No. 2, Community Support Powerpoint, submitted at the January 29, 2014 hearing (KEY 1079-1082);
- k. School District Exhibit No. 3, report on Community Involvement, submitted at the January 29, 2014 hearing (KEY 1083-1085);
- l. School District Exhibit No. 4, Financial review Powerpoint, submitted at the January 29, 2014 hearing (KEY 1086-1095);
- m. The applicant's closing letter submitted on February 12, 2014³ (KEY 1096-1103);
and
- n. Transcripts from the December 18, 2013 and January 29, 2014 hearings.

General Information

- 7. The name of the proposed charter school is the Key Charter School of Harrisburg, even though the application fact sheet states that the proposed name is "Key Charter School of Reading." (KEY 6; 1/29/14 N.T. 71).
- 8. The applicant simultaneously submitted a charter school application for a separate charter school in the Reading School District.
- 9. 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). 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. (KEY 37).

³ The applicant was permitted to submit a closing document, referenced as proposed findings of fact and conclusions of law, no later than February 17, 2014. (1/29/14 N.T. 239).

Curriculum and Educational Program

10. The “curriculum” and educational program for the proposed Charter School are described on KEY 8-19.

11. Sherry Roland-Washington, the School District’s School Improvement Administrator, performed a review of the curricular and educational documents presented by the applicant and provided a review of her findings to the Board at the January 29, 2014 hearing. (KEY 1072-1078; 1/29/14 N.T. 194-202). Her findings, which are found to be credible and supported by the record, were as follows:

- a. The curriculum that was provided did not include all of the aspects of a comprehensive framework as defined by the Pennsylvania Department of Education with respect to the Standards Aligned System, which consists of six components: clear standards, fair assessments, curriculum framework, instruction, materials and resources and interventions/acceleration. (KEY 1072).
- b. The Application does not appropriate address how students will be assessed or how the applicant will implement the four types of assessments. (1/29/14 N.T. 194-195, 197).
- c. The Application inconsistently addresses what the applicant will focus on in terms of priority of standards or mastery of concepts. (KEY 1073; 1/29/14 N.T. 195-196).

- d. Insufficient information was included as to how the applicant will train its staff on various intense programs, including Wilson Reading, Pearson assessment and data collection resources identified in the application. (1/29/14 N.T. 197).
- e. While the use of specific programs was discussed in the Application, there is not a written curriculum framework that clearly defines the Big Ideas, Concepts, Competencies, Essential Questions and Key Vocabulary for each grade level and subject. (KEY 1074-1075; 1/29/14 N.T. 197-198).
- f. No curriculum maps or scopes and sequences were provided to show how those courses meet the requirements of 22 Pa. Code Chapter 4. The grading scale was not provided. No syllabi or lesson plan template aligned to the course work were provided. (KEY 1075, 1077; 1/29/14 N.T. 194-195, 198).
- g. The application did not address the implementation of the Department of Education's Student Learning Objectives ("SLO") initiative, which requires the curriculum to first be in place. (KEY 1076; 1/29/14 N.T. 200).
- h. Specific materials to be used for instruction in reading and writing for grades K-12 were not cited, nor were materials for math, science, history and English in grades 9-12. (KEY 1076).
- i. Inconsistent references to RtI and RtII were made in the Application, which are different systems. It is not clear which intervention process will be utilized by the applicant. (1/29/14 N.T. 198-199).
- j. The English Language Learner ("ELL") program described by the applicant is not in adherence to Pennsylvania's requirements: the application does not

appropriately address ELP levels in accordance with WIDA levels, ESL staffing or exit criteria for ELL students. (KEY 1076; 1/29/14 N.T. 199).

k. Materials for ESL instruction or advanced students were not cited. (KEY 1076).

l. Technology integration as mandated by the Common Core Standards was only cited for High School and not for the other grade levels. (KEY 1077).

m. No information was provided regarding the success rate of the use of the specific programs that the applicant is proposing or the achievement rate of students using those programs in similar urban schools. (1/29/14 N.T. 201).

12. Multiple instructional programs, practices and assessments were referenced in the Application and in the applicant's presentation, including but not limited to: Reggio Emilio (K-2); Workshop Approach (K-8); Wilson Foundations (K-3); NWEA/MAP assessments; mClass/DIBELS; Expeditionary Learning (3-8); Blended Learning using Flex Model and GRadpoint (9-12); online, 1-1, small group and whole group instruction (9-12); standard, Honors and Advanced Placement coursework (9-12); and credit recovery and dual enrollment (9-12). (KEY 8-16, 1054).

13. According to the Application, the High School (grade 9-12) curriculum would be primarily online, through a blended learning model using GradPoint as the academic platform. (KEY 14).

a. The entire High School curriculum is summarized in approximately one page. (KEY 14-15).

b. There was no delineation in the Application as to the staffing or technology that would be necessary to implement the blended learning model.

- c. Information was not provided on the breakdown of instructional time that High School students would have online versus direct instruction by certified teachers in class.
- d. Other than a table listing courses in English, Mathematics, Science and History and identifying Spanish and French as foreign language courses (KEY 15), no information was provided about elective courses available to 9th graders or the other High School grades.
- e. Despite a reference to Gradpoint offering “over 150 rigorous, multimedia courses” (KEY 14, 1054), the Application did not identify which courses would be offered to students enrolled in the Charter School and no course descriptions were provided in any subject area.
- f. No Gradpoint curriculum maps or framework were provided establishing alignment with Pennsylvania standards.
- g. Although the Application states that French and Spanish will be offered, the applicant stated at the hearing that the determination of what foreign languages will be offered will be determined by what area of certification applicants have.
(1/29/14 N.T. 83).

14. No proposed daily schedule for any grade level was submitted to the School District.
(1/29/14 N.T. 82).

15. The Application barely references English Language Learners (“ELL”) or the programming that will be provided to them. The only discussion about ELL programming is on KEY 18-19, including a reference to training staff in Sheltered Instruction Observation Protocol (“SIOP”).

16. Commercial documents about the SIOP were included in the Appendixes, but none of them were specific to Key Charter School or described how the SIOP would be implemented at the Charter School. (KEY 410-427).
17. The document, “Framework for English Language Proficiency Development Standards Corresponding to the Common Core State Standards and the Next General Science Standards”, published by the Council of Chief State School Officers, was also included on KEY 428-532. However, this document is not specific to the Charter School and states that it is intended to be a guidance document to the States in developing or adapting their English Language Proficiency standards with the Common Core State Standards. (KEY 434-436).
18. No information was provided in the Application about key components of ELL programming, such as how such students would be identified, what forms would be used to identify ELLS, how students would be assessed for placement, how the specific language needs of students will be met through instruction, exit criteria and post-exit monitoring of ELLs and administration of annual proficiency and academic assessments.
19. No ESL curriculum aligned to Pennsylvania English Proficiency Standards and academic standards was provided.
20. The incidence of ELL students in the School District is 33%. (1/29/14 N.T. 199).
21. No English as a Second Language (“ESL”) teacher is listed in the Application or the budget.
22. The special education programming is described on only two pages at KEY 20-21. The Charter School underestimated the School District’s special education population: they

planned for a population of 7.5-10% but the School District's incidence of special education is approximately 21%. (KEY 20; 1/29/14 N.T. 213).

23. No child find policy, evaluation and IEP procedures or other documents were provided delineating the special education policies, procedures or practices at the Charter School.
24. Related services for special education (school psychologist, therapists, etc.) will be contracted out by the Charter School. (KEY 20). The application did not identify whether any relationships had yet been established by the applicant with any related service provider in the area. The applicant stated at the hearing that they have contracted with Therapy Source for psychological and therapy services. (1/29/14 N.T. 100).
25. No professional development plan was provided in the Application. (1/29/14 N.T. 88-89). Although professional development topics are listed on one page in the Application (KEY 57), the material does not address how the applicant will provide professional development regarding the Charter School's mission, programs and educational plan. SIOP is not one of the programs mentioned in the professional development topic list.
26. With respect to the professional development that would be provided to the faculty, no information was provided regarding the timeline for specific program-based professional development, the person responsible, resources, knowledge and skills that would be addressed or research and best practices.
27. No teacher induction materials were provided with the Application.

Community Support

28. Ken Cherry and Andrea Coleman-Hill were listed in the Application as the founders of the proposed school. (KEY 41). However, since the Application was submitted, Ms. Coleman-Hill no longer has a role with respect to the Charter School. (1/29/14 N.T. 113).

29. Mr. Cherry does not live in the School District. (1/29/14 N.T. 113).
30. Four board members have been identified for the Charter School: Patricia Petrosino, Vincent Petrosino, Shannon Kertzel and Kendra Harvey. (KEY 42; 1/29/14 N.T. 114). Only Mr. Petrosino and Ms. Harvey live in the School District; the others live in York. (1/29/14 N.T. 114-115).
31. The proposed enrollment for the initial year of opening is 614 students in grades K-9. (KEY 37).
32. At the first hearing, 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 has 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

does not require anyone to attest, sign or verify any of the information that is being 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 are each included in the list at KEY 1065-66. (1/29/14 N.T. 116).

33. At the January 29, 2014 hearing, the applicant represented that there were 296 pre-enrollments, but no documentation was submitted to the School District to support that statement. (1/29/14 N.T. 120). The applicant stated that 84% of the pre-enrollments were from the School District. (Id.).

34. A Petition of support was included at KEY 730 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).

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

36. Twenty-three (23) individuals electronically submitted a form "Statement of Support" on the applicant's website. (KEY 731-750, 1024-1026).

a. Two of the electronic form statements were from founders of the school (Ms. Kertzel – KEY 731; Mr. Cherry – KEY 739).

b. None of the forms are signed by anyone or verified.

c. Incomplete addresses were provided on many of the forms.

- d. The website set up for Key Charter School does not differentiate between the Key Charter School of Harrisburg and the Key Charter School of Reading.
 - e. Mr. Cherry stated that it was his belief that nine (9) of the forms were from residents of Harrisburg. (1/29/14 N.T. 126-127).
37. No letters of support for the Charter School from local businesses, elected officials, residents or community members were submitted with the Application.
38. The applicant has not held any community meetings to date regarding the proposed school. (1/29/14 N.T. 162).
39. Ken Cherry, the applicant for the school, is the proposed CEO of the Charter School. (1/29/14 N.T. 104).
40. No one else has been identified for employment at the school, according to the applicant. (1/29/14 N.T. 104).
41. The applicant does not propose to utilize a management company. (1/29/14 N.T. 106).
42. The applicant has been having discussions with Capital Area Head Start to run a pre-kindergarten program out of the proposed facility. (1/29/14 N.T. 78, 163).
43. Two community groups were referenced in the Application – Girls and Boys Club of Harrisburg, Girl Scouts of Harrisburg (KEY 42), but the applicant stated at the hearing that partnerships have not yet been formed with those entities or any other groups. (1/29/14 N.T. 163).
44. Vincent Petrosino and Kendra Harvey spoke in favor of the Charter School during the public comment period at the December 18, 2013 hearing, both of whom are proposed board members for the Charter School. (12/18/13 N.T. 44-48). No other individuals provided public comment in favor of the proposed school at that meeting. (Id.).

45. Six individuals spoke in favor of the Charter School at the January 29, 2014 hearing. (1/29/14 N.T. 59-67).

46. Barbara Hasan, the Assistant to the Superintendent, reviewed information in the Application pertaining to community support. (KEY 1079-1085; 1/29/14 N.T. 203-212). One of the matters noted by Ms. Hasan was that the applicant had done very little outreach in the community according to what was represented in the Application. (1/29/14 N.T. 204-205).

Location

47. The school will be located at 2200 Market Street, Harrisburg, the site of the former Bishop McDevitt High School. (KEY 50).

48. The Application states: "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 Application references 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 does not yet 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).

49. An agreement of sale with the Diocese of Harrisburg was provided. (KEY 1008-1021).
The purchase price of the building is \$1,775,000.00. (Id.). Ken Cherry signed the agreement on behalf of Key Charter School, even though that entity has not been incorporated to date. (KEY 1017).
50. Mr. Cherry stated that renovation costs may be \$3 million, which would be rolled into the mortgage. (1/29/14 N.T. 175-176).
51. The agreement of sale includes several special clauses, which were signed off on by Mr. Cherry. (KEY 1016). One of those clauses states 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. Security issues were not addressed in the Application or how students in a K-12 program would be effectively separated and monitored in one building. The applicant provided some information about a swipe card program and different entrances and locations for different grade levels (1/29/14 N.T. 147-149, 157-159), but detailed information was not provided, including a site plan for the proposed school as it would look when operational for the Charter School. No security plan has yet been prepared by the applicant. (1/29/14 N.T. 159-160).
53. No money has been budgeted for security personnel. (1/29/14 N.T. 149-151).

Financial Planning Requirements

54. The applicant submitted a "Budget Form" addressing expenditures for the 2014-15 school year, as well as cash flow projections for the five-year period beginning with the 2014-15 school year. (KEY 829-842).

55. The applicant revised the budget documents in the middle of the application review, but did not submit those documents to the School District by the deadline established for supplemental documents. The School District never received a revised budget form from the applicant. (1/29/14 N.T. 99-101). Based upon statements made by the applicant at the hearing, various items in the revised budget form changed significantly from the original budget. (See e.g., 1/29/14 N.T. 101).
56. The “Budget Form” does not contain any revenue data. (KEY 829).
57. No five-year budget or start-up budget was submitted.
58. 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 in the supplemental materials, 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).
59. No expenditures were included in the submitted budget form relating to repayment of the \$250,000 start-up loan from TRF. (1/29/14 N.T. 172).
60. The applicant does not know if the \$240,000 included under the line item “lease” in the “budget form” would be sufficient to pay the mortgage on the property in the 2014-15 school year. (1/29/14 N.T. 172).

61. No information was provided regarding the specific health care insurance options available to employees at the Charter School for comparison with the School District's insurance coverage. The only thing provided in the Application was a flier from an insurance broker, but the applicant clarified that the flier was not indicative of what the Charter School would offer to its employees. (KEY 1033; 1/29/14 N.T. 109-110).
62. At the January 19, 2014 hearing, the applicant provided some pricing for an Aetna plan for single, spousal and family coverage, but could not provide any information about the Aetna point of service plan in terms of co-pays, deductibles and costs to the employee. (1/29/14 N.T. 110-112).
63. The PSERS cost included in the "Budget Form" was calculated at 15%, not the 21% rate for the 2014-15 school year. (1/29/14 N.T. 172).
64. The Application states: "Scheduling of deferred maintenance has been allocated in the yearly operating cost at approximately \$500,000." (KEY 50-51).
65. The Application states: "A 5% reserve has been allocated for emergency spending at approximately \$500,000." (KEY 51).
66. William Gretton, the School District's business consultant, reviewed the Application with respect to operations and services, budget and finances and facility and maintenance. (KEY 1086-1095; 1/29/14 N.T. 212-228). Mr. Gretton's report and testimony are found to be credible and indicated as follows:
 - a. The "Budget Form" submitted by the applicant is not a budget; it is a list of expenses and then five years of cash flow, which has nothing to do with a budget. The "Budget Form" also does not follow the PDE-2028 form for budgets, so there are no revenue sources listed and no function/object codes are listed consistent

with the Pennsylvania Manual of Accounting and Financial Reporting for Pennsylvania Public Schools. (KEY 1088, 1090; 1/29/14 N.T. 214-215, 217-218).

- b. Inconsistent statements were made in the Application regarding the number of teachers that the Charter School would need in year one: 29, 34 and 64. (1/29/14 N.T. 213).
- c. Due to the reduced expectation of special education population, the applicant will need at least 4-6 additional special education teaching and aid positions to accommodate the anticipated special education population, which would amount to approximately \$280,000-\$420,000 in expenditures in year one depending on the salaries and positions. (KEY 1087; 1/29/14 N.T. 213).
- d. Certain line items in the submitted budget are not supported with quotes or explanations and are inconsistent with the statements made by the applicant at the hearings. (KEY 1088; 1/29/14 N.T. 215-216). The following items appear to be missing from the budget or at least were not identified in such a manner as to be able to determine if they are included: cafeteria/food service costs; extracurricular expenses; specific educational programs with attached costs that were identified in the Application (e.g. Wilson Reading, DIBELS); hiring of a comptroller and school nurse; maintenance and snow removal; medical services for students; and contracted special education services. (1/29/14 N.T. 215-216, 222-223). Other expenditures were insufficiently budgeted: legal/payroll at a total of \$11,000; custodial services at \$100,000 and utilities at \$30,000 for a building that is over 100,000 square feet. (1/29/14 N.T. 215-16, 223-224)

- e. The cash flow projection indicates that instructional staff costs (salaries and benefits) in later years are not consistent with the number of teachers that they would need to add to accommodate enrollment growth, resulting in each new teacher earning only \$9,882, which is not realistic. (KEY 1088; 1/29/14 N.T. 217, 220-221).
- f. Because no anticipated revenues are included, it is impossible to know if the applicant's anticipated expenditures would be within its revenue sources. (1/29/14 N.T. 218).
- g. There is no identified expenditure for technology (hardware, internet service, connection fees) in the budget and it is impossible to determine whether the applicant has appropriately planned for their technology needs because very little information was submitted. (1/29/14 N.T. 219-220).
- h. PSERS rates were not properly identified in the budget or in the cash flow projections, which would result in a \$3.6 million deficit over the course of the five years. (KEY 1092; 1/29/14 N.T. 220).
- i. Information provided about health care benefits and insurance coverage was insufficient to compare with the School District's benefits. (1/29/14 N.T. 221).
- j. The budget form is based upon full 600-plus student enrollment as of the first day of the 2014-15 school year. (1/29/14 N.T. 223).
- k. The applicant has not address asbestos issues in the building or the other suspect environmental conditions that were addressed in the Environmental Site Assessment that was completed by the Diocese in 2008, including oil storage

tanks, asbestos floor tile, plaster and pipe insulation and high radon propensity.
(KEY 859-860; 1/29/14 N.T. 225-226).

- l. No cost of renovations or retrofitting was provided. (1/29/14 N.T. 226-227).
- m. The \$25,000 budgeted for all insurance costs will not be sufficient for a building of the size to be used by the applicant. (1/29/14 N.T. 226).

Governance Issues

67. Articles of Incorporation have not yet been filed with the Department of State to establish the proposed Charter School. (1/29/14 N.T. 71).

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.

Against this backdrop, the Application filed for the Charter School 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.

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.Cmwlth. 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. *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.

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”).

The proposed charter school will be located within the Harrisburg City School District and intends to enroll 614 students in its first year of operation. Based upon the case law from CAB, that is the community from which the evidence of support must come. Two of the proposed board members live in Harrisburg. However the proposed CEO and other board members live in York, Pennsylvania. 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. The applicant has not held any community meetings to garner support for the proposed school.

Only 8 people signed a petition of support for the school. 23 electronic Statements of Support were submitted, 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. Only nine individuals who submitted an electronic Statement of Support on the website had a Harrisburg address, according to the applicant. In addition, some of the Statements of Support were submitted by founders of the school. 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.

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 does not know the grade levels to be entered by any of the children represented by the 142 pre-enrollment forms. The pre-enrollments include students who do not reside in Harrisburg and who the School District could determine were too old for entry into the Charter School. Another problem with the pre-enrollment forms were the manner in which they were submitted – because there were all submitted online without any requirement for a signature or other verification, it is not known if any or all of the persons who filled out the form are, in fact, the persons they said they were. The applicant represented that they had 296 pre-enrollments, but documents was not provided to the School District to support this representation.

Other than Mr. Cherry, the applicant did not identify a single proposed employee for the school. Only six individuals not associated with the founding group spoke in support of the applicant at the hearing.

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. See Penn Hills Charter School, CAB No. 2001-7 (applicant's submission of 11 letters of support and 197 signatures on a petition supporting establishment of charter school was insufficient to demonstrate sustainable support). In contrast, sustainable support for the charter concept was found to exist in the aggregate in *Gillingham Charter School*, CAB No. 2010-7, where the application provided: (1) letters of intent to enroll approximately 151 students (out of the anticipated 180 enrollment in year one); (2) 80 letters of support from community members; (3) 17 letters of support from businesses and community organizations; (4) a letter of support from a State Senator; and (5) 5 residents speaking in support at a public hearing. *Id.* at 4-5; see also Carbondale Area School District v. Fell Charter School, 829 A.2d 400, 405-406 (Pa.Cmwlth. 2003) (sustainable support submitted where applicant presented 554 signatures in a petition, 85 emails, 54 letters, monetary donations and 126 pre-enrollment applications); *Montour School District v. Propel Charter School*, 889 A.2d 682, 684-685 (Pa.Cmwlth. 2006) (sustainable support submitted where applicant presented 194 signatures in a petition, letters of support and 196 pre-enrollment applications for 300 seats in year one). General support for the charter school concept is not sufficient to demonstrate sustainable support. *Shenango Valley Regional Charter School*, CAB No. 1999-11; *Legacy Charter School*, CAB No. 2000-14. 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 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 Application establishes that the applicant has not demonstrated, based upon its support and planning, the capability of providing a comprehensive learning experience to students.

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”) and admitted at the second hearing that the entity has not yet been incorporated, as no Articles have yet been filed with the Department of State. This is a deficiency in the Application, as a Charter can only be granted to a non-profit corporation.

This issue reflects a 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 Application.

Curriculum and Educational Program

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). For the following reasons, the applicant has not fulfilled this burden.

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 assessment system to be utilized is not clear, and the instructional programs to be offered to students, particularly at the High School level, were not properly and sufficiently described, as more fully described in the findings of fact above.

"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 Application is akin to the limited information provided in the *Duquesne Charter School* case, wherein CAB denied the application. The *Duquesne Charter School* case also happens to be the most recent case issued by CAB regarding charter school applications. 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, like the applicant here, 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).

All of these observations cause the Board to conclude that the applicant is not prepared, 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).

Special Education

Charter schools are required by the IDEA to have a continuum of placement options, from least restrictive to most restrictive, available to students. The continuum of placement requirements of 34 CFR § 300.115(a) and (b)(1) and (2) are not addressed by this applicant. No plan has been expressed as to how the Charter School will address the needs of students who

require pull-out services during the course of a school day or in a particular subject matter, including how the Charter School intends to staff those needs, particularly in light of the School District's incidence of special education needs, which was not properly recognized by the applicant. These are deficiencies in the Application. See, e.g. MB Resiliency Cyber Charter School of PA, at 10-11 (1/28/13 decision signed by Ronald J. Tomalis) (deficiencies found where the Secretary determined that the applicant failed to demonstrate that it has a continuum of placement options and staff available to meet the needs of students with disabilities); *V3 Academy Cyber Charter School*, at 11, 14 (1/28/13 decision signed by Ronald J. Tomalis) (same); *PA Career Path Cyber Charter School*, at 11 (1/28/13 decision signed by Ronald J. Tomalis) (same).

No child find policy was provided under 22 Pa. Code § 711.21. The following key areas were not discussed in any detail in the Application: assistive technology, the IEP process, least restrictive environment, positive behavior support and extended school year.

All of these issues constitute deficiencies in the applicant's planning to provide comprehensive learning experiences to the targeted student population.

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.

In the Application, there is little discussion as to how ELLs would be identified, placed and provided with services. The Charter School failed to provide sufficient evidence of an ESL program that is appropriate for the education of ELLs. The budget does not provide for the hiring of an ESL teacher in year one, even though the ELL population in the School District is 33%. The Application failed to provide specifics on how key components of an ESL program would be implemented at the Charter School, including how students would be identified, placed and assessed. No planned instruction for ELL students was specified and no plan was provided to implement the required exit criteria and conduct the required monitoring of progress of ELL for two years. Nor was any evidence of a research-based program model for English language acquisition identified, and no ESL curriculum aligned to PA English Language Proficiency Standards and academic standards was provided. No assessments for ELLs were identified and no information was given about how it would be ensured that ELLs participated in the PSSA as appropriate with accommodations. See, e.g. *Insight PA Cyber Charter School*, at 7 (1/28/13 decision signed by Ronald J. Tomalis); *MB Resiliency Cyber Charter School of PA*, at 9; *Urban Cyber Charter School*, at 9 (types of deficiencies found where the Secretary determined that the applicant failed to provide sufficient evidence of an ESL program). These are deficiencies 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.

The applicant did not submit a start-up budget, a one-year budget or a five-year budget in the format prescribed by PDE. It was therefore impossible to determine whether the applicant properly budgeted for expenditures based upon anticipated revenues. The budget does not adequately reflect the educational programming, staffing needs, staffing costs, equipment and technology needs, and operational services, as described in the factual findings above. At this time, the applicant does not have sufficient information regarding its facility financing needs so no reasoned planning could have taken place to date to determine how facility debt would be repaid. 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, and were not budgeted. 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); *Akoban 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).

The CSL requires as follows:

Every employe of a charter school shall be provided *the same health care benefits as the employe would be provided if he or she were an employe of the local district*. The local board of school directors may require the charter school to provide the same terms and conditions with regard to health insurance as the collective bargaining agreement of the school district to include employe contributions to the district's health benefits plan.

24 P.S. § 17-1724-A(d) (emphasis added). No information was provided by the applicant to determine if the benefits to be offered will be the "same" as the School District's. See e.g., *Mercury Online Charter School of PA*, at 5-6 (financial planning for employee costs was insufficient due to failure to account for the provision of the same health benefits as employees).

For these reasons, the Board finds that the budgetary planning by the applicant is deficient.

C. The 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 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 curriculum 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 is 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.

Admittedly, the applicant provided information about the physical facility, the ownership thereof and the sales price. However, the applicant 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. The Board believes that the failure to address these issues is a deficiency in the Application.

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." The applicant did not attempt to explain this provision or otherwise indicate that

they had made any agreement with the Diocese as to the interpretation of this language. 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 deficiency in the Application.

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

The applicant did not provide a professional development plan or that addressed how the Charter School will provide initial and ongoing training to teachers and other staff on the mission of the school and the proposed educational programming of the school. No detail was provided about who would provide such professional development, the resources that would be used or the knowledge and skills that would be addressed. While a proposed calendar was provided that indicated when professional development would occur, the specific details about what would occur during those periods were inadequate. Also, no teacher induction plan was provided.

5. Section 1719-A(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

As referenced by Mr. Gretton in his presentation, the applicant has only budgeted \$25,000 for the purchase of the entire gamut of insurance needs of the school. Given the proposed size of the facility, at over 100,000 square feet, said amount is insufficient to purchase fire and liability insurance for that size of a property, in addition to the other required insurances for a school with over 600 students, and accompanying staffing needs, in year one.

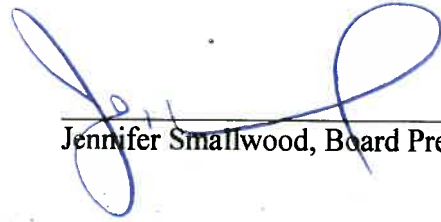
D. The Extent To Which The Charter School May Serve As A Model For Other Public Schools.

Pursuant to Section 1717-A(e)(2)(iv) of the CSL, the School District must evaluate the Charter School's 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 deficiencies in the 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 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(f)-(i). In the alternative, the applicant may exercise a one-time opportunity to revise and resubmit its application pursuant to 24 P.S. § 17-1717-A(f).



Jennifer Smallwood, Board President