

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

Spartansburg Community Charter School,	:		
Petitioner	:		
	:	CAB Docket No.	2016-02
v.	:		
	:		
Corry Area School District,	:		
Respondent	:		

OPINION

HISTORY

In accordance with the Charter School Law, Act of June 19, 1997, P.L. 225, No. 22, *as amended*, 24 P.S. § 17-1701-A *et seq.* (“CSL”), this matter comes before the Pennsylvania State Charter School Appeal Board (“CAB”) on appeal by Spartansburg Community Charter School (“Spartansburg” or “Charter School”) from the Decision issued October 5, 2015 (“Decision”) by the Corry Area School District Board of School Directors (“District” or “District Board”) which denied Spartansburg’s Second Revised Application (“Second Revised Application”).

Spartansburg filed a Petition for Appeal with CAB on February 5, 2016. The District Board filed an Answer to the Petition on or about March 10, 2016. By letter dated March 7, 2016, CAB delegated the matter to a hearing officer to address any procedural issues raised in the case in order to prepare the case for argument before CAB, as well as to establish a schedule for the filing of briefs and proposed findings of fact, and to then certify the record to CAB.

A telephonic conference among the parties occurred on April 18, 2016; and on the same date, the hearing officer issued an Order Establishing Briefing Schedule. Spartansburg, by letter dated May 5, 2016, requested an extension of time to file a brief, which request was granted without opposition from the District Board by Order dated May 5, 2016. On or about June 17, 2016,

Spartansburg filed its Brief in Support of the Appeal. Thereafter, the District Board filed its Brief in Support of the Denial of Spartansburg Community Charter School's Application on or about July 14, 2016. Spartansburg filed its Reply Brief on or about August 5, 2016.

Despite the requirements of the Order Establishing Briefing Schedule,¹ Spartansburg did not include proposed findings of fact and proposed conclusions of law in either of its briefs. Accordingly, on August 16, 2016 the hearing officer issued an Order Directing Petitioner to File Proposed Findings of Fact and Proposed Conclusions of Law, requiring the filing of the missing material by September 16, 2016. Spartansburg submitted its Proposed Findings of Fact and Proposed Conclusions of Law by cover letter dated September 16, 2016. The Hearing Examiner certified the record to CAB on September 20, 2016.

¹ In addition to establishing a briefing schedule, the Order specifically required that "[a]ll briefs shall include proposed findings of fact and proposed conclusions of law, and each proposed finding of fact shall refer to the specific page number of the transcript and/or the specific location within an exhibit, which supports the proposed finding of fact. General citations, such as to "Exhibit 1," without anything more to direct the reader's attention to the relevant portion of the cited exhibit, will not be acceptable if the cited exhibit comprises multiple pages."

FINDINGS OF FACT

1. Spartansburg initially applied for a charter from the District Board by submitting an Application on August 14, 2014 (“Initial Application”). Reproduced Record (“Record”) at 203a – 723a, 4731a.
2. The District Board held a public hearing on the Initial Application on September 25, 2014. Record at 1a – 202a.
3. The District Board notified the Charter School that the record pertaining to the Initial Application was closed as of November 10, 2014, 45 days after the public hearing. Record at 751a.
4. On December 5, 2014 and January 7, 2015, the Charter School submitted supplemental information which the District Board considered to be a revised and resubmitted Application (“First Revised Application”) because the record on the Initial Application had already closed. Record at 752a, 755a – 2549a.
5. By Decision dated December 8, 2014 (“December 2014 Decision”), the District Board rejected and denied the Initial Application. Record at 729a – 754a.
6. Spartansburg did not appeal the December 2014 Decision. Record, *passim*.
7. The District Board held a public hearing on the First Revised Application on January 22, 2015. Record at 2550a – 2647a.
8. By Decision dated February 2, 2015 (“February 2015 Decision”), the District Board rejected and denied the First Revised Application. Record at 2663a – 2690a.
9. Spartansburg did not appeal the February 2015 Decision. Record, *passim*.
10. On August 7, 2015, Spartansburg submitted a Second Revised Application. Record at 2691a – 4363a.

11. The District Board held a public hearing on the Second Revised Application on September 16, 2015. Record at 4363a – 4555a.

12. The District Board issued its Decision on the Second Revised Application on October 5, 2015 (“October 2015 Decision), denying the Second Revised Application based on the following components, which the District Board found deficient:

- a. Mission;
- b. Educational goals;
- c. Curriculum;
- d. Method of assessment;
- e. Manner in which community groups will be involved in charter school planning process;
- f. Financial plan;
- g. Description and address of physical facility;
- h. Extracurricular activities;
- i. Extent to which charter school will improve pupil learning;
- j. Increased learning opportunities for all pupils;
- k. Encouraging the use of different and innovative teaching methods;
- l. Creating new professional opportunities for teachers;
- m. Providing parents and students with expanded choices in the type of educational opportunities;
- n. Method of accountability and measurement of academic standards;

o. Demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the public hearing;

p. Capability, in terms of support and planning, to provide a comprehensive learning experience; and

q. Extent to which charter school will serve as a model to other schools.

Record at 4738a – 4772a.

13. Spartansburg appealed the District Board’s decision to CAB by Petition for Appeal by the Spartansburg Community Charter School (“Petition”) filed February 5, 2016. *Spartansburg Community Charter School v. Corry Area School District*, Docket No. CAB 2016-02.²

14. The Charter School intends to serve grades Kindergarten through 6. Record at 2699a, 2733a.

15. The Charter School’s mission is set forth as follows: to provide families an opportunity to enroll students in a small, rural community school that maintains the longstanding culture of the community and surrounding areas; provide responsive academic programming for all students; to provide educators a unique, team-oriented workplace where student academic success is paramount; to provide integrated lessons that help students to value and understand the vital role of agriculture, food, natural resources, and associated agribusinesses; to provide opportunities for students to develop leadership skills and experience personal growth; and to partner with local farm, agriculture, natural resource, and other agribusiness in order to provide

²Further citations to the filings in the docket will use the abbreviated citation, “Docket No. 2016 – 02.”

students hands-on learning opportunities outside the regular classroom, all so that, upon completion of the program, students will have the necessary skills to be highly successful in their middle and high school years, thus preparing them to enter the adult world. Record at 2700a.

16. The Charter School’s educational goals are: (1) to ensure that barriers to student learning are addressed in order to increase student achievement; (2) to produce students who are agriculturally literate, understanding the food and fiber system, including its history, economic impact, social significance, and environmental significance; and (3) to provide its students and families with an aligned curriculum and professional staff that promote student learning. Record at 2701a – 2702a.

17. The Charter School’s core philosophy includes providing students with hands-on learning opportunities outside the regular classroom, via an educational program where “[a]griculture and agribusiness themes will permeate the academic standards and serve as the catalyst for students’ school success.” Record at 2700a, 2704a.

18. The Charter School’s overarching vision is, among other things, to produce students who, having been immersed in the agricultural surroundings of the community, have a respect and understanding of agriculture’s role locally, across Pennsylvania, and nationwide. Record at 2700a.

19. Spartansburg intends to employ one full-time teacher whose role will be to fully integrate the Agriculture/Agribusiness curriculum and project-based learning into the Charter School’s K-6 classrooms. Record at 2704a.

20. Spartansburg submitted curriculum maps for Grades K through 6 for the core subjects of English Language Arts (“ELA”), Mathematics, Science and Social Studies, as well as for Art, Health/Physical Education, Music, Agriculture/Agribusiness integration and for three

interdisciplinary courses: “Evergreen Trees for Kids,” “School/Community Garden,” and “Birds Near Us.” Record at 3091a – 3606a.

21. In drafting its application and curriculum, Spartansburg worked with Dr. John Linden, an educational consultant with 45 years of experience in education who has worked in traditional public schools as a math teacher, principal and assistant superintendent and who has also served as the CEO and board member of a charter school. Record at 2567a.

22. The curriculum maps for Art, Health/Physical Education, Music, Agriculture/Agribusiness integration and the three interdisciplinary courses include a class description, state the standards addressed, and through use of a template divided into five columns entitled “Learning Objective/Standard,” “Content/Skill,” “Assessment,” “Materials/Resources,” and “Time,” present further information about the subject courses. Record at 3091a – 3140a, 3290a – 3381a, 3478a – 3518a.

23. The curriculum maps for ELA, Mathematics, Science and Social Studies provide a course summary, and through use of a similar template divided into five columns entitled “Big Ideas,” “Modules/Concepts,” “Competencies,” “Standards (PA Core),” and “Resources/Assessments,” presents further information about the course, including the PA Core Standards addressed. Record at 3141a – 3289a, 3382a – 3477a, 3519a – 3606a.

24. The curriculum maps for the core subject areas of ELA, mathematics, science and social studies state the concepts which students should know upon completing the course, as well as the competencies, or things, students should be able to do after completing the course; but they do not include any resources or assessments that will be utilized in those subject areas. Record at 3141a – 3289a, 3382a – 3477a, 3519a – 3606a, 4495a.

25. The curriculum maps for Art and Agriculture/Agribusiness Integration list methods of assessment and materials/resources. Record at 3091a – 3140a, 3353a – 3365a, 4505a.

26. Many of the resources and materials listed in the Agriculture/Agribusiness Integration curriculum maps, some of which come from 4H and educational websites, are not age-appropriate, including the following:

a. In one resource listed for Kindergarten, called “Pets 1, 2, 3,” Level 1 was written for grades 3 – 4, Level 2 was written for grades 5 – 7, and Level 3 was written for grades 6 to 9. Record at 4506a – 4507a.

b. The “Pets 1, 2, 3” material includes an activity sheet that includes a “pet fact” that tells students that “[a] light pressure on the hamster’s belly will cause the penis to show.” Record at 4653a.

c. The activity sheet for “Pets 1, 2, 3” also includes a “Reproductive System’s Word Bank” which includes the following terms: clitoris, ovary, penis, prostrate [sic], testis, vagina and uterus. Record at 4652.

d. Aside from the fact that the provider of “Pets 1, 2, 3” intended the content for children several years older than Kindergarteners, the actual content of this activity is not age-appropriate for the five-year olds who comprise a typical Kindergarten class. Record at 4507a.

e. The Agriculture/Agribusiness Integration curriculum map for grades K – 2 includes a resource, “Foods A, B, C,” which is written for grades 3 – 4 (“Foods A”), grades 5 – 6 (“Foods B”) and grades 7 – 9 (“Foods C”). Record at 4507a.

f. The Agriculture/Agribusiness Integration curriculum map for grades K – 2 includes as a resource a hyperlink for online activities related to agri-science, but the hyperlink accesses a professional development document for 4H professionals and volunteers, a document clearly not targeted to kids K to 2. *Id.*

g. Another hyperlink in the Agriculture/Agribusiness Integration curriculum map for grades K to 2, purportedly related to bicycle safety, links to an ATV safety leaders' guide. *Id.*

h. The Agriculture/Agribusiness Integration curriculum map for grades 3 to 6 references resources written for middle school and high school students, in that fifth graders would have “Swine 1, 2, 3,” Level 1 of which is written for grades 3 to 5, while Level 2 is written for grades 6 – 8, and Level 3 for grades 9 to 12. Record at 4508a.

i. The vocabulary included with the “Swine 1, 2, 3” resource is not age-appropriate. Record at 4508a, 4654a.

j. Grades 3 to 6 are to have “Foods D,” which is written for students in grades 10 – 12, and “Water Conservation,” which is written for grades 9 to 12. Record at 4509a.

k. “Steps to a Healthy Teen,” which is on the curriculum map for 6th grade, is written for grades 9 to 12 and intended for ages 14 to 19. *Id.*

27. Dr. Linden was not familiar with “Pets 1, 2, 3” and did not personally review the listed course elements to see what the lessons involved. Record at 4457a, 4458a.

28. Spartansburg intends the examples of activities, such as “Pets 1, 2, 3” and “Swine 1, 2, 3,” to be what the District Board must look at in order to determine whether or not Spartansburg has an appropriate curriculum. Record at 4459a.

29. The Charter School’s curriculum maps set forth the PA Core Standards to which they are aligned. Record at 3091a – 3606a.

30. The 1st Grade curriculum map for ELA includes one standard that does not exist, CC.1.4.1.7, and fails to incorporate the following standards: CC.1.2.1.E, CC.1.2.1.G, CC.1.2.1.J, CC.1.2.1.K, CC.1.3.1.F, CC.1.3.1.H, CC.1.3.1.I, CC.1.3.1.J, CC.1.4.1A, CC.1.4.1.C, CC.1.4.1.D, CC.1.4.1.G, CC.1.4.1H, CC.1.4.1.J, CC.1.4.1.K, CC.1.4.1.M, CC.1.4.1.N, and CC.1.4.1.X. Record at 3141a – 3158a.

31. The Grades 1 – 6 Art curriculum map lists Reading, Writing, Speaking and Listening standards, a category of standards which does not exist in Pennsylvania, as well as, for that category, standards numbered 1.6, 1.7, 1.8, which are numbered standards that do not exist among any of Pennsylvania’s academic standards, although those numbers do exist in the Virginia public school system’s standards. Record at 3091a, 3099a, 3107a, 3114a, 3121a, 3128a, 3135a, 4493a, 4595a.

32. The Charter School’s Agriculture/Agribusiness Integration curriculum map for Grades 3 – 6 lists Mathematics standards, 2.5.A, 2.5.B, 2.6.D and 2.11.B, which do not exist. Record at 3353a, 4506a.

33. The Charter School’s Agriculture/Agribusiness Integration curriculum map for Grades K – 2 lists ELA standard 1.6.A, which does not exist. Record at 3361a, 4505a.

34. The School/Community Garden Interdisciplinary Project curriculum map lists standards 1.8, 1.9 and 2.9, which do not exist among Pennsylvania's academic standards. Record at 3373a.

35. Elsewhere on the Charter School's curriculum maps, additional standards are listed that do not exist, including ELA 1.6.1 and Math 2.3.B, 2.3.C, 2.3.D, 2.5.A, 2.5.B, 2.6.D and 2.11.B. Record at 4505a – 4506a, 4665a.

36. The Interdisciplinary Agriculture curriculum map for all grades lists no standards to which it is aligned. Record at 3366a – 3370a.

37. Standards 2.1.F and 2.2.D are included among the standards listed in the Agriculture/Agribusiness Integration curriculum map for Grades 3 – 6, but those standards relate only to High School Math and are not applicable to a school that serves grades K – 6. Record at 3353a, 4505a, 4665a.

38. Reading informational text at age-appropriate levels is a part of PA Core Standard for ELA 1.2, but that standard is not referenced in the Agriculture/Agribusiness Integration curriculum map for Grades K – 2. Record at 3361a – 3365a, 4510a.

39. ELA Core Standard 1.4, Writing, appears nowhere on the Agriculture/Agribusiness Integration curriculum map for Grades K – 2. Record at 3361a – 3365a, 4511a.

40. Standard 1.3, Reading Literature, appears on neither the Agriculture/Agribusiness Integration curriculum map for Grades K – 2 nor the Agriculture/Agribusiness Integration curriculum map for Grades 3 – 6. Record at 3353a – 3365a, 4511a.

41. The Charter School provided no lesson plans or instructional timelines which indicate where and how the Charter School's agriculture and agribusiness theme and hands-on

learning are going to be integrated into the Charter School's educational programming; nor did it provide any information about what project-based learning opportunities and hands-on learning experiences outside the classroom will exist or how students will be assessed in the context of project-based learning opportunities and hands-on learning experiences outside the classroom. Record at 3366a, 3368a, 4448a and *passim*.

42. Spartansburg provided two sample lesson plans, both for Grades 3 – 5 and both of which are traditional lesson plans that do not involve any hands-on learning outside of the classroom. Record at 3969a – 3987a, 4511a – 4512a.

43. There is no reference to agriculture in the curriculum maps for Mathematics, ELA, music, art or physical education, and the Agriculture/Agribusiness Integration material is not a stand-alone course. Record at 4450a.

44. Integration of the Agriculture/Agribusiness Integration material is not apparent in the four curriculum maps for the four core subject areas (ELA, Mathematics, Science and Social Studies), especially for grades 2, 4, 5 and 6 which do not even reference PA Environment and Ecology Standard 4.4 related to agriculture and society. Record at 4498a – 4499a.

45. The only identification of hands-on learning opportunities outside the regular classroom in conjunction with any potential local business partner is the designation of Berkey's Nursery as a "local business connection" in the curriculum map for the interdisciplinary agriculture activity, "Evergreen Trees for Kids," and the listing of a visit to a tree farm in the Materials/Resources portion of the Agriculture/Agribusiness Integration curriculum map. Record at 3366a, 3368a.

46. The Charter School intends to evaluate students using benchmark assessments, quizzes, tests, marking period grades, monthly grade level goal setting meetings, monthly

Instructional Support Team meetings with grade level teachers for students who are not meeting goals, monthly goal-setting meetings with individual teachers, lesson study process and evaluation, PSSA results, ACCESS results, an annual Parent Satisfaction Survey, and quarterly and annual Student Discipline Reports. Record at 2718a, 2725a.

47. Spartansburg will use multiple types of assessments, including the following:

a. Teachers will use methods including: information checks for understanding, quizzes, tests, prompts, and performance tasks to determine levels of achievement.

b. Reporting tools will include student portfolios and report cards, and students will be assessed through various reading activities, projects, writing, and other testing methods and measures.

c. The Charter School will also use appropriate group testing data and other assessment tools, including data from Aimsweb used in grades K – 3 to establish a baseline and then to monitor each student’s progress through the year across the curriculum; Classroom Diagnostic Tools (“CDTs”) designed to provide a picture or snapshot of how students are performing; DIBELS to assess the acquisition of early literacy skills; the WADE assessment to identify decoding and encoding skills for students referred for learning support services; the WIDA Model which monitors the progress of English language learners; and PSSA and PASA assessments the data from which will be used to assist teachers in identifying students in need of additional educational opportunities.

Record at 2725a – 2726a.

48. To involve community groups in its planning processes, Spartansburg will actively participate programmatically with the Pennsylvania Farm Bureau, the Pennsylvania Department of Agriculture, the Center for Dairy Excellence, the Penn State Cooperative Extension, the Spartansburg Community Fair, the Cornell University Cooperative Extension, the Pennsylvania Friends of Ag Foundation and other nationwide commodity organizations which provide training opportunities for teachers, supporting curricular materials that tie directly to the Pennsylvania Academic Standards, research materials, lessons and lesson plans, and other supports to keep agriculture and agribusinesses at the heart of education. Record at 2728a.

49. The Second Revised Application enumerates 28 local businesses which have committed to actively provide and support educational experiences for Spartansburg students in order to provide opportunities for every Spartansburg student to gain real world experience that is not typically available as part of a traditional public school education. Similarly, a number of local businesses provided letters of support which indicate the same desire to partner with the Charter School. Record at 2728a – 2729a, 3027a – 3053a.

50. A number of individuals and businesses have pledged monies as donations or loans in order to support the Charter School's start-up and operation. Record at 4029a – 4035a.

51. Community support is also found in the Spartansburg Community Fair Board which has contributed funds to cover organizational start-up costs; the Spartansburg Fire Department which provided its facility for regular meetings of the founding group; the Spartansburg Alumni Association which has provided support for outreach to graduates; and local government officials, including the Borough Council President, the Borough Council and the Mayor, all of whom have expressed support for the proposed Charter School. Record at 74a, 93a, 2628a – 2629a, 2632a – 2633a, 2738a.

52. Spartansburg also intends to have founders, parents and community members as members of the Board of Trustees. Record at 2729a.

53. Spartansburg intends to establish a Home and School Association (“HSA”) which will include parents, Board members, an administrator, and other community members who support the mission of Spartansburg. Record at 2729a, 2730a.

54. The HSA will sponsor parent/community meetings to give parents, students and community members the opportunity to communicate their concerns and suggestions which Spartansburg will utilize to improve its general operations and various programs. Record at 2730a.

55. Parents and guardians will be collaborators in their children’s education, and Spartansburg intends to actively support parents’ participation in their child’s education by encouraging parents to take an active role in school activities, share their knowledge of their children with teachers and counselors, and give staff feedback on their children’s experience and progress at open houses, parent-teacher conferences and other school events. Record at 2720a.

56. The Charter School’s projected enrollment for its first year of operation is 120 students; and it anticipates adding five students each year so that in its fifth year of operations, it will enroll 140 students. Record at 2699a, 2733a.

57. The Charter School’s Second Revised Application included a five-year plan, for 2016 through 2020, with projections for: enrollment of both regular and special education students; revenue; expenses, broken down into categories including personnel expenses; contracted services; student activities and food; insurance; consumable supplies; travel, telephone, printing; books/instructional aids; equipment; site costs; debt service; and capital projects fund transfers. Record at 2744a, 4040a – 4044a.

58. The Second Revised Application's financial information provided detail of the revenue that would be generated by the Charter School and the expenditures it would make, utilizing function and object codes. Record at 4042a.

59. The Charter School will be located at 138 Jefferson Street, Spartansburg, Pennsylvania ("the Jefferson Street property"), which is presently a vacant parcel of land. Record at 2578a, 2748a, 4423a.

60. Pursuant to a nonbinding letter of intent signed by Lessors Bradly P. Berkey, Sally A. Berkey, Duane T. Berkey, and Kathy M. Berkey, the Berkeys intend to lease the Jefferson Street property to Spartansburg. Record at 4114a – 4116a, 4423a.

61. Spartansburg intends to place 11 leased modular classrooms on the Jefferson Street property until a permanent structure is built and presented a projected site layout for the Jefferson Street property (delineated the "Berkey Property" in the exhibit), as well as a plan indicating how the modular units would be set up. Record at 2578a – 2580a, 2748a, 4111a, 4423a, 4482a – 4484a, 4719a.

62. The Jefferson Street property has electrical service, public sewage and a water supply; and although contractors have offered to make the connections of the modular classrooms to those services, as well as to construct a foundation, free of charge or pro bono, the financial information in the Second Revised Application included quotes for electricity, water and sewer. Record at 2578a, 2583a, 4432a.

63. The Charter School will offer a variety of after-school activities that extend and complement in-school time activities which could include academic programs such as after-school homework help, tutoring, or programs or clubs designed around specific skills such as technology, languages, science, etc.; enrichment programs such as 4-H programs, chess club,

multi-media, arts; or recreational activities such as intramural sports activities and YMCA activities. Record at 2730a – 2731a.

64. Spartansburg has no agreements or plans which have been entered into or developed with the District for activities offered within the District. Record at 2731a.

65. Spartansburg produced 55 pre-enrollment forms representing approximately 92 children which would be approximately 76% of the Charter School's projected first-year enrollment of 120. Record at 2699a, 2773a – 2829a.

66. Spartansburg produced a petition bearing 308 signatures of support and 221 letters of support from the community or from individuals with ties to the community. Record at 2633a – 3080a.

67. At the three hearings in this matter, a total of 26 separate and unique individuals spoke in support of the Charter School. Record at 171a – 172a, 2628a – 2645a; 4367a – 4370a, 4377a – 4384a.

68. Commonwealth and local officials support the Charter School, including Ann Louise Wagner, Mayor of Spartansburg; George D. Greig, Secretary of Agriculture; State Representative Brad Roae; the Crawford County Commissioners; and State Representative Kathy Rapp, as do at least 23 local farmers, churches, physicians and businesses. Record at 2952a, 3022a, 3023a, 3028a – 3030a, 3031a – 3054a.

69. Local businesses intend to commit the resources necessary to guarantee the Charter School's future success, to be involved with the proposed educational program in its entirety by providing students and teachers with access to, and the opportunity to learn from, the business, and to be integral parts of the educational process by providing access and opportunities to learn. Record at 3031a – 3036a.

CONCLUSIONS OF LAW

1. The Pennsylvania State Charter School Appeal Board (“CAB”) has jurisdiction in this matter. 24 P.S. § 17-1717-A(f) and (i)(1).

2. CAB has the authority under the Charter School Law, Act of June 19, 1997, P.L. 225, No. 22, *as amended*, 24 P.S. § 17-1701-A *et seq.* (“CSL”) to agree or disagree with the findings of the District Board based upon CAB’s review of the certified record. 24 P.S. § 17-1717-A(i)(6).

3. The Second Revised Application of Spartansburg demonstrates sustainable support for the charter school’s plan by teachers, parents, other community members and students in accordance with the CSL. 24 P.S. § 17-1717-A(e)(2)(i); Findings of Fact 49 – 51, 65 – 69.

4. The Second Revised Application of Spartansburg fails to demonstrate that the Charter School has the capability, in terms of support and planning, to provide a comprehensive learning experience to students. 24 P.S. § 17-1717-A(e)(2)(ii); Findings of Fact 15 – 45.

5. The Second Revised Application of Spartansburg fails to demonstrate that the proposed charter school has adequately considered the following information requested in section 1719-A. 24 P.S. § 17-1717-A(e)(2)(iii):

a. The proposed curriculum set forth in the Second Revised Application of Spartansburg is inadequate as presented because it is not age-appropriate and is not fully aligned to PA Core Standards; so the Second Revised Application of Spartansburg does not comply with section 1719-A(5) as to curriculum. 24 P.S. § 17-1719-A(5); Findings of Fact 15 – 45.

b. Although the Second Revised Application of Spartansburg contains a general enumeration of traditional assessments it intends to use to evaluate whether students are meeting educational goals, its curriculum maps do not provide any methods of assessment for core subject areas, nor do they contain any information about how students' participation in project-based learning and hands-on learning experiences outside the classroom will be assessed; so the Second Revised Application of Spartansburg does not comply with section 1719-A(5) as to methods of assessment. 24 P.S. § 17-1719-A(5); Findings of Fact 24, 21, 46, 47.

6. The Second Revised Application of Spartansburg demonstrates that the proposed charter school has adequately considered the following information requested in section 1719-A (24 P.S. § 17-1717-A(e)(2)(iii)) in that it contains:

a. a statement of its mission and education goals, in compliance with section 1719-A(5). 24 P.S. § 17-1719-A(5); Findings of Fact 15 – 18.

b. information about the manner in which community groups will be involved in the charter school planning process, in compliance with section 1719-A(8). 24 P.S. § 17-1719-A(8); Findings of Fact 48 – 55.

c. a financial plan that complies with section 1719-A(9). 24 P.S. § 17-1719-A(9); Findings of Fact 50, 56 – 58.

d. a description and address of the physical facility in which the Charter School will be located and information about the ownership and lease arrangements related to the physical facility, in compliance with section 1719-A(11). 24 P.S. § 17-1719-A(11); Findings of Fact 59 – 62.

e. information indicating whether any agreements have been entered into or plans developed with the local school district regarding participation of the charter school students in extracurricular activities within the school district, in compliance with section 1719-A(14). 24 P.S. § 17-1719-A(14); Findings of Fact 63, 64.

7. The Second Revised Application of Spartansburg fails to demonstrate that the proposed charter school conforms to the legislative intent outlined in section 1702-A as required by section 1717-A(e)(2)(iii), 17-1717-A(e)(2)(iii), based on the Charter School's failure to demonstrate that the Charter School has the capability, in terms of support and planning, to provide through its proposed curriculum a comprehensive learning experience to students. This deficiency makes it impossible to properly evaluate the extent to which the Second Revised Application and proposed charter school would conform to the legislative intent with regard to encouraging the use of different and innovative teaching methods, creating new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site, providing parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system, and holding the Charter School accountable for meeting measurable academic standards. *In re: Allentown Engineering Academy Charter School*, Docket No. CAB 2014-01 at 22; *In re: Duquesne Charter School Founding Group d/b/a Duquesne Charter School*, Docket No. CAB 2013-01 at 12; *In re: Environmental Charter School*, Docket No. CAB 1999-14 at 21. Findings of Fact 15 – 45.

8. The Second Revised Application of Spartansburg fails to demonstrate that the proposed charter school may serve as a model for other public schools as required by section 1717-A(e)(2)(iv). 24 P.S. § 17-1717-A(e)(2)(iv); Findings of Fact 15 – 45; *see also In re:*

Allentown Engineering Academy Charter School, Docket No. CAB 2014-01 at 22; *In re: Duquesne Charter School Founding Group d/b/a Duquesne Charter School*, Docket No. CAB 2013-01 at 12; *In re: Environmental Charter School*, Docket No. CAB 1999-14 at 21.

9. The Second Revised Application of Spartansburg fails to meet all the requirements of the CSL. Findings of Fact 1 – 69.

DISCUSSION

A. Standard of review

Pursuant to section 1717-A(e) of the CSL, an application for a charter is to be evaluated based on the following criteria:

- (i) The demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the public hearing held under subsection (d).
- (ii) The capability of the charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the adopted charter.
- (iii) The extent to which the application considers the information requested in section 1719-A and conforms to the legislative intent outlined in section 1702-A.
- (iv) The extent to which the charter school may serve as a model for other public schools.

24 P.S. § 17-1717-A(a)(2)(i) – (iv).

CAB applies a *de novo* standard of review when considering decisions denying charter school applications. *West Chester Area School District v. Collegium Charter School*, 812 A.2d 1172, 1180 (Pa. 2002). In an appeal before CAB, the decision made by the local board of school directors shall be reviewed on the record, as certified by the local board of school directors. 24 P.S. § 17-1717-A(i)(6). CAB shall give due consideration to the findings of the local board and specifically articulate its reasons for agreeing or disagreeing with those findings, making an independent determination as to the merits of the application. *Id.* The Commonwealth Court has held in the case of the denial of a charter school application that “[t]he General Assembly has unquestionably granted [CAB] the authority to substitute its own findings and independent judgment for that of the local board.” *West Chester Area School District v. Collegium Charter School*, 760 A.2d 452, 461 (Pa. Cmwltlth.

2000), *aff'd*, 812 A.2d 1172 (Pa. 2002). Therefore, while giving due consideration to the vote of the School Board, CAB independently reviews the record in accordance with the requirements of the CSL. *Id.*

B. Burden of proof

With regard to the degree of proof required to establish a case before an administrative tribunal, it is the same degree of proof used in most civil proceedings, *i.e.*, a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). A preponderance of the evidence is the lowest degree of proof recognized in civil judicial proceedings, *Lansberry, supra*, 578 A.2d at 602, *citing Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950), and is generally understood to mean that the evidence demonstrates that a fact is more likely to be true than not to be true; or if the burden were viewed as a balance scale, the evidence in support of the proponent's case must weigh slightly more than the opposing evidence. *Se-Ling Hosiery*, 70 A.2d at 856. Accordingly, the record in this matter is reviewed to determine if the evidence which Spartansburg produced at the hearings meets the Charter School's burden of proving that its Second Revised Application satisfies all of the requirements enumerated in the CSL at section 1717-A(e)(2), 24 P.S. § 17-1717-A(e)(2), warranting the granting of the Second Revised Application.

C. Sustainable support

The CSL establishes the requirement that a charter school application must demonstrate sustainable support for the charter school plan by teacher, parents, other community members and students, including comments received at the public hearing held under subsection (d).

24 P.S. § 17-1717-A(e)(2)(i). CAB has concluded in past decisions that "sustainable support" means support sufficient to sustain and maintain the proposed charter school as an ongoing

entity. *In re Independence Charter School Initiative*, Docket No. CAB 2000-2 at 11. The *Independence Charter School* decision also enunciated the following general principles for considering whether an applicant has the requisite support required by the CSL:

[T]he indicia of support are to be measured in the aggregate rather than by individual categories. The statutory listing of “teachers, parents, other community members and students” indicates the groups from which valid support for the charter school plan can be demonstrated. It does not appear that the General Assembly intended this list to be mutually exclusive or exhaustive. Failure to demonstrate strong support in any one category is not necessarily fatal to an application. Nevertheless, a reasonable amount of support in the aggregate must be demonstrated.

Independence Charter School at 11 – 12; see also *Carbondale Area School District v. Fell Charter School*, 829 A.2d 400, 405 (Pa. Cmwlth. 2003), citing *Brackbill v. Ron Brown Charter School*, 777 A.2d 131, 138 (Pa. Cmwlth. 2001) (quoting and approving CAB's interpretation proffered in that case), *petition for allowance of appeal denied*, 821 A.2d 588 (Pa. 2003).

Spartansburg produced 55³ pre-enrollment forms, representing approximately 92 children, which would be approximately 76% of the Charter School's projected first-year enrollment of 120. Besides those pre-enrollment forms, Spartansburg produced a petition bearing 308 signatures⁴ of support, Record at 3055a – 3080a, and 221 letters⁵ of support from the community or from individuals with ties to the community.⁶ Of those 221 letters of support, 42⁷ of them referenced children that the letter writers might send to the Charter School.

³There are actually 56 pre-enrollment forms in the record, but one of them only contains one name, which is noted not to be eligible and not to be counted in the pre-enrollment totals. The information on the form is also largely illegible. Record at 2808a.

⁴Of those signatures, 25 signers indicated that they were under age 18. Record at 3062a, 3066a, 3069a, 3070a, 3071a, 3072a, 3075a, 3076a.

⁵Eight of the letters had duplicates, in that they bore slightly different text but the same name and address for the letter writers. Duplicates were only counted once in the total provided here. Record at 2845a and 2846a, 2875a and 2876a, 2883a and 2884a, 2959a and 2960a, 2979a and 2980a, 2990a and 2992a, 3001a and 3002a, and 3024a and 3025a. Of these last four letters, they all had the same address, and two of the letter writers had the same last name and first name.

⁶One letter was from New Jersey and one letter was from Florida. Record at 2851a, 3020a.

Additionally, Spartansburg produced five letters from Commonwealth and local officials who support the Charter School and 23 letters of support from local farmers, churches, physicians and businesses. Of the local businesses, one indicated the intent to commit the resources necessary to guarantee the proposed school's future success, a second plans to be involved with the proposed educational program in its entirety by providing students and teachers access to, and the opportunity to learn from, the business, a third and fourth plan to be integral parts of the educational process, and a fifth fully plans to be an integral participant in the educational program proposed for the students by providing access and opportunities to learn. And finally, at the three hearings in this matter, a total of 30 separate and unique individuals⁸ spoke in support of the Charter School.

In prior decisions CAB has found, as sufficient evidence of sustainable support, pre-enrollments ranging from 34% (*In re: William Bradford Academy Charter School*, Docket No. CAB 1999-8) to 47% (*In re: Vida Charter School*, Docket No. CAB 2009-2) to 63% (*Carbondale Area School District v. Fell Charter School*, *supra*, 829 A.2d at 405) of the proposed charter school's projected enrollment. Similarly, in *In re: Infinity Charter School*, Docket No. CAB 2002-04, CAB determined that their parents' expressions of interest in enrolling more than 90 children and supportive speeches by more than twenty separate and unique persons at the relevant public hearings who represented parents, students and teachers, constituted sufficient support in the aggregate to warrant the granting of the charter. *Infinity Charter School* at 13.

⁷Two of them were from individuals with the same last name and same address; one was illegible. Record at 2907a, 3001a, 3002a.

⁸Some individuals spoke at more than one of the public hearings. Individuals who spoke multiple times have only been counted once in arriving at this total. More than 30 individuals spoke, but some of them did not express an opinion on the charter school and a few of them spoke against it.

Applying these principles, all of the evidence which Spartansburg has provided, as summarized above, amounts to sustainable support when taken in the aggregate.

The District Board argues that sustainable support for the Charter School has eroded since Spartansburg submitted its original application in 2014. District Board's Brief at 42, 43. In support of this argument, the District Board asserts that many of the letters of support from the community and local businesses are over a year old; that many of the letters are form letters; that multiple letters from the same individuals have been submitted; and that two letters of support were received from outside the Commonwealth, one was illegible, and 14 came from outside the Corry Area School District. Further, the petitions provided in support of the Charter School had "many" signatures from children under 18, and it is not clear what the individuals understood about the Charter School when they signed the petitions which undermines the credibility of those petitions. District Board's Brief at 39 – 40.

With regard to the age of the letters of support from the community and local businesses, there is nothing in the record to indicate why the community and local businesses would have withdrawn their support simply due to the length of time the approval process has taken.

With regard to the District Board's assertions that the existence of multiple letters of support from the same individuals artificially increases the level of support demonstrated by those letters, a close review reveals that there were only eight duplicate letters out of a total of 221, two letters were received from outside the Commonwealth, one was illegible, and 14 came from outside the Corry Area School District.⁹ This number does not reduce the evidence of support provided by the remaining letters nor does it suggest that the support is no longer

⁹Charter schools may enroll children from other school districts; so the fact that individuals from neighboring school districts support the proposed charter school does not mean that the proposed charter school lacks sustainable support within the District.

“sustainable.” Even disregarding the 25¹⁰ letters of support which the District criticizes, there remain 196 letters of support which are sufficient to evidence sustainable support when joined with all of the other indicators discussed here.

Likewise, the District Board’s arguments with regard to the unreliability of the petitions are not valid. First, the District Board asserts that “many” of the signatures on the petitions were from children under 18 years of age. In fact, of 308 signatures, 25 of them – less than 10% – indicate that the signers were under 18 which still leaves 283 adult signatures in favor of the Charter School, and does not in any way reduce the value of the petitions. Indeed, in the *Infinity Charter School* case, the Commonwealth Court upheld CAB’s finding of sufficient support in the aggregate even though “there [was] some dispute between the parties relating to the exact numbers of letters of support.” *Central Dauphin School District v. Founding Coalition of the Infinity Charter School*, 847 A.2d 195, 201 (Pa. Cmwlth. 2004).

Second, the District Board argues that the credibility of the petitions is undermined because the record is not clear as to what the individuals signing the petitions were told about the Charter School which they were asked to support by signing the petitions. This argument is analogous to the argument which the Montour School District made in *Montour School District v. Propel Charter School-Montour*, 889 A.2d 682 (Pa. Cmwlth. 2006). There, CAB found demonstrated, sustainable support in the form of petitions, community meetings, letters of support, information about financial backing from the foundation community, and pre-applications received from 196 prospective students for enrollment in the Propel Charter School; but the Montour School District argued that the evidence was not “verifiable.” *Propel Charter*

¹⁰The total of 25 is derived from adding the eight duplicate letters, 14 from outside the District, two from outside the Commonwealth, and one that is illegible.

School-Montour, 889 A.2d 682 at 687. However, the Commonwealth Court found that argument to be without merit because there is no language in the CSL preventing an applicant from establishing community support through the use of unverified petitions. *Id.*

On the face of each page of the petition submitted in support of the Second Revised Application, the petition says:

Petition in Support of Spartansburg Community Charter School Pursuant to 24 P.S. § 17-1717-A(e)(2)(i)

I declare that I am a resident of the Corry Area School District and that I am signing the Petition in Support of Spartansburg Community Charter School to establish a charter school in the Corry Area School District with full knowledge of the purpose of this petition, I knowingly include my name, address and signature on the Petition in Support of Spartansburg Community Charter School.

Record at 3055a – 3080a. That certainly gave signers some indication of what they were signing to support and is nearly identical to the language on petitions found to be adequate in *In re: Allentown Engineering Academy Charter School*, Docket No. CAB 2014-01 at 23. Also, as in the *Propel Charter School-Montour* case, there is no language in the CSL which prevents an applicant from establishing community support through the use of petitions such as this. Under the rationales of *Propel Charter School-Montour* and *Allentown Engineering Academy Charter School*, then, Spartansburg’s unverified petitions are an acceptable way of establishing community support.

The District Board also asserts, in support of its argument against sustainable support, that the pre-enrollment forms show an erosion of support and are unreliable because they indicate on their face that parents are not obliged to send their children to the Charter School or because they were signed by individuals who have no intention of sending their children to the Charter School. District Board’s Brief at 40 – 41. As part of its “erosion of support” argument, the District Board points to the pre-enrollment forms which Spartansburg submitted with its

Initial Application and argues that 30 original persons who submitted pre-enrollment forms did not resubmit them a second time with the Second Revised Application. District Board's Brief at 40. In making this erosion of support argument, however, the District Board overlooks the fact that Spartansburg specifically said that the initial application should be disregarded. Record at 2575. But even if, in disregard of that statement, the pre-enrollment forms from the Initial Application are considered, the fact is that Spartansburg submitted 59 pre-enrollment forms with the Initial Application and 55 with the Second Revised Application. That is so small a difference that it cannot be deemed to be an erosion of support.

The District's unreliability argument cannot be credited either. It is based on the fact that parents are not obliged, by signing the pre-enrollment form, to send their children to the Charter School and/or the fact that the pre-enrollment forms were signed by individuals who have no present intention to send their children to the Charter School. Parents sign pre-enrollment forms to indicate interest in and support for the proposed Charter School. That is akin to the use of unverified petitions to gauge support, the practice approved by *Propel Charter School-Montour, supra*. Nonbinding pre-enrollment forms are simply one tool for gauging interest and support for a proposed charter school. Furthermore, in at least one prior case, CAB found that the failure of the proposed charter school to provide *any* names of parents committed to sending their children to the school was not fatal to the issue of demonstrating sustainable support for the plan. *In re: Environmental Charter School Appeal*, Docket No. CAB 1999-14, at 13. In the case of Spartansburg, the pre-enrollment forms at least provide such names, but under the *Environmental Charter School Appeal* ruling Spartansburg need not have provided even those names. Moreover, in the *Infinity Charter School* case, sufficient support in the aggregate was found despite the fact

that the charter school applicant presented letters of intent to enroll from only 16 students of the targeted enrollment of 120. *Id.*, 847 A.2d at 200.

Based upon the foregoing, Spartansburg has successfully demonstrated the sustainable support required by the CSL, and CAB rejects the District's findings to the contrary.

D. Curriculum

The CSL requires a charter school applicant to demonstrate an ability to provide the “comprehensive learning experience” it proposes, to demonstrate the extent to which it may serve as a model for other public schools, and to demonstrate the extent to which the application considers the information requested in section 1719-A and conforms to the legislative intent outlined in section 1702-A. 24 P.S. § 17-1717-A. Among the information requested in section 1719-A, 17-1719-A is information regarding the “mission and education goals of the charter school, the curriculum to be offered and the method of assessing whether students are meeting educational goals.” 24 P.S. § 17-1719-A(5). Furthermore, in order to provide a comprehensive learning experience to students, a charter applicant must demonstrate adequate support and planning in the charter application. *In re: Environmental Charter School, supra*, at 15.

The District rejected the Charter School's Second Revised Application for a number of reasons, under these provisions of the CSL, that all relate back to the District's finding of deficiencies in the Charter School's proposed curriculum. In essence, the District maintains that the Charter School has failed to submit an acceptable curriculum within the meaning of the applicable Pennsylvania Department of Education (“PDE”) regulations, with the result that the District cannot properly evaluate the Charter School to determine if its proposal meets the

remaining criteria to be considered under the CSL. *C.f. In re: Environmental Charter School*, CAB Docket No. 1999-14 at 21.

The failure of a charter school applicant to provide a sufficient curriculum plan has been found to be a basis for the denial of an application because it is evidence that the proposed charter school could not be a model for other public schools, as required under section 1717-A(e)(2)(iv), 24 P.S. § 17-1717-A(e)(2)(iv). *Environmental Charter School, supra*. An applicant is required to describe the proposed charter curriculum with substance, not merely in terms of goals and guidelines. *In re: Shenango Valley Regional Charter School*, CAB Docket No. 1999-11; *Howard Gardner Multiple Intelligence Charter School*, CAB Docket No. 2011-4. Although a curriculum must be described in substance, it is not necessary for a charter school to completely describe the contents of its curriculum in detail. *In re: Pocono Mountain Mathematics and Technology Charter School*, CAB Docket No. 2004-5. When a charter school applicant provides a great deal of detail, however, it is entirely appropriate to examine that detail to determine if it comprises an acceptable curriculum. See, for example, the decision in *Allentown Engineering Academy Charter School, supra*, at 16 – 22, in which CAB closely examined all of the curricular materials presented in the application and determined that the curriculum failed to properly align itself with the PA Core Standards.

In this case, Spartansburg has submitted curriculum maps for Grades K through 6 in its Second Revised Application. The curriculum maps cover Art, English Language Arts (“ELA”), Health/Physical Education, Mathematics, Music, Science and Social Studies. There are also curriculum maps for Agriculture/Agribusiness integration and for three interdisciplinary courses, “Evergreen Trees for Kids,” “School/Community Garden,” and “Birds Near Us.” The curriculum maps for Art, Health/Physical Education, Music, Agriculture/Agribusiness

integration and the three interdisciplinary courses, include a class description, state the standards addressed, and through use of a template divided into five columns entitled “Learning Objective/Standard,” “Content/Skill,” “Assessment,” “Materials/Resources,” and “Time,” present further information about the subject courses. The curriculum maps for ELA, Mathematics, Science and Social Studies provide a course summary and through use of a similar template divided into five columns entitled “Big Ideas,” “Modules/Concepts,” “Competencies,” “Standards (PA Core),” and “Resources/Assessments,” present further information about each course, including the PA Core Standards addressed.

Section 17-1732-A of the CSL identifies the provisions of the PDE’s regulations to which charter schools are subject and includes 22 Pa. Code § 4.4 as one of the specifically enumerated provisions. *See* 24 P.S. § 17-1732-A, n.8. Section 4.4(a) of those regulations provides as follows:

(a) It is the policy of the Board that the local curriculum be designed by school entities to achieve the academic standards under § 4.12 (relating to academic standards) and any additional academic standards as determined by the school entity.

22 Pa. Code § 4.4(a). The PDE’s regulations further define a “curriculum” and “planned instruction” as follows:

Curriculum—A series of planned instruction aligned with the academic standards in each subject area that is coordinated and articulated and implemented in a manner designed to result in the achievement at the proficient level by all students.

* * *

Planned instruction—Instruction offered by a school entity based upon a written plan to enable students to achieve the academic standards under § 4.12 (relating to academic standards) and any additional academic standards as determined by the school entity.

22 Pa. Code § 4.3.

Although Spartansburg has provided curriculum maps for the prescribed areas set forth in the regulations which apply to the age level of the students Spartansburg plans to enroll, the curriculum maps fail to meet the definition of “curriculum” set forth in the PDE’s regulations because the curriculum maps lack any indicators of the planned instruction required by the regulations. In particular, the curriculum maps for the core subject areas of ELA, mathematics, science and social studies do not include any resources or assessments that will be utilized in those subject areas. Record at 4495a. Nor do they give any indication of what types of hands-on learning experiences outside the classroom will occur, because there is no planned instruction indicated that will use hands-on learning outside the classroom. While these curriculum maps state the concepts which students should know as a result of completing the course, as well as the competencies or things students should be able to do after completing the course, those concepts and competencies are primarily a restatement of the PA academic standards. Accordingly, they give no idea how the teacher of the course is to lead the students through the course or gauge whether students understand the concepts and have attained the competencies at the heart of the course.

Additionally, while the Agriculture/Agribusiness Integration curriculum maps are more complete in terms of their listing of assessments, resources and materials that are missing from the Charter School’s core subject curriculum maps, many of the resources and materials listed in the Agriculture/Agribusiness Integration curriculum maps are not age-appropriate. Some of the resources and assessments listed come from 4H and educational websites, including a resource listed for Kindergarten called “Pets 1, 2, 3.” Record at 4506a. However, Level 1 of “Pets 1, 2,

3” was written for grades 3 – 4; Level 2 was written for grades 5 – 7; and Level 3 was written for grades 6 to 9. Record at 4506a – 4507a.

Likewise, the Agriculture/Agribusiness Integration curriculum map for Grades K – 2 includes a resource, “Foods A, B, C,” Part A of which is written for Grades 3 – 4, Part B of which is written for Grades 5 – 6, and Part C of which is written for Grades 7 – 9. Record at 4507a. That K – 2 curriculum map also includes a hyperlink for online activities related to agri-science which links to a professional development document for 4H professionals and volunteers, a document clearly not targeted to kids K to 2. *Id.* Another hyperlink in the materials for grades K to 2, purportedly related to bicycle safety, links to an ATV safety leaders’ guide. *Id.* Similar issues exist with the Agriculture/Agribusiness Integration curriculum map for Grades 3 to 6: the resources are written for middle school and high school students; fifth graders would have “Swine 1, 2, 3,” but Level 1 is written for Grades 3 to 5, Level 2 is written for Grades 6 – 8, and Level 3 for Grades 9 to 12. Record at 4508a.

In drafting its application and curriculum, Spartansburg worked with Dr. John Linden, an educational consultant with 45 years of experience in education who has worked in traditional public schools as a math teacher, principal and assistant superintendent and who has also served as the CEO and board member of a charter school. Record at 2567a. And yet, Dr. Linden was not familiar with “Pets 1, 2, 3” and did not personally review the listed course elements to see what the lessons involved. Record at 4457a, 4458a. Despite this, he indicated that the examples of activities, such as “Pets 1, 2, 3” and “Swine 1, 2, 3” are what the District must look at in order to determine whether or not Spartansburg has an appropriate curriculum. Record at 4459a. The above-described age-inappropriateness of those examples, coupled with Dr. Linden’s testimony

about his unfamiliarity with them, indicates a lack of planning on the part of Spartansburg and supports the determination that Spartansburg does not have an appropriate curriculum.

Nor is there is any evidence or discussion in the record to explain whether Spartansburg intentionally chose age-inappropriate materials; and if it did so, why. There is no evidence or discussion that might indicate that Spartansburg intends to use them, somehow, in an age-appropriate manner. *C.f. In re Duquesne Charter School Founding Group d/b/a Duquesne Charter School*, Docket No. CAB 2013-01 at 12. The Charter School's first academic goal is to ensure that barriers to student learning are addressed in order to increase student achievement. Record at 2701a. But using resources and assessments that are not age-appropriate actually *creates* barriers to learning. Record at 4509a – 4510a. The curriculum maps provided by Spartansburg do not, therefore, demonstrate that it is capable, in terms of support and planning, of providing comprehensive learning experiences to students. The additional conclusion that follows is that Spartansburg has not demonstrated that it can improve pupil learning.

Furthermore, the curriculum maps set forth the PA Core Standards to which they are aligned, but there are standards missing, or standards listed that do not exist, with the result being that the curriculum maps describe a program that is not fully aligned with PA standards. For example, the 1st Grade curriculum map for ELA includes one standard that does not exist, CC.1.4.1.7, *see* Record at 3150a, and fails to incorporate the following standards: CC.1.2.1.E, CC.1.2.1.G, CC.1.2.1.J, CC.1.2.1.K, CC.1.3.1.F, CC.1.3.1.H, CC.1.3.1.I, CC.1.3.1.J, CC.1.4.1A, CC.1.4.1.C, CC.1.4.1.D, CC.1.4.1.G, CC.1.4.1.H, CC.1.4.1.J, CC.1.4.1.K, CC.1.4.1.M, CC.1.4.1.N, and CC.1.4.1.X. Record at 3141a – 3158a.

Additionally, the Grades 1 – 6 Art curriculum map lists Reading, Writing, Speaking and

Listening standards, a category of standards which does not exist in PA, as well as standards numbered 1.6, 1.7, 1.8, numbered standards that do not exist anywhere among Pennsylvania's academic standards. Record at 3091a, 3099a, 3107a, 3114a, 3121a, 3128a, 3135a. Standards with those numbers do exist, however, in the Virginia public school system's standards to which the District traced some of the language in the Charter School's curriculum maps. Record at 4493a, 4595a. This information indicates that the ELA courses in question are not fully aligned to *Pennsylvania's* academic standards.

Similar references to nonexistent standards are apparent in the Charter School's Agriculture/Agribusiness Integration curriculum maps. The map for Grades 3 – 6 lists Mathematics standards 2.5.A, 2.5.B, 2.6.D and 2.11.B which do not exist. Record at 3353a, 4506a. The curriculum map for Grades K – 2 lists ELA standard 1.6.A which does not exist. Record at 3361a, 4505a. The School/Community Garden Interdisciplinary Project curriculum map lists standards 1.8, 1.9 and 2.9 which do not exist. Record at 3373a. Other standards listed that do not exist include ELA 1.6.1 and Math 2.3.B, 2.3.C, 2.3.D, 2.5.A, 2.5.B, 2.6.D and 2.11.B. Record at 4505a – 4506a, 4665a. Moreover, the Interdisciplinary Agriculture curriculum map for all grades lists *no* standards to which it is aligned. Record at 3366a – 3370a. Further discrepancies lie in the fact that some of the standards listed are not aligned to the appropriate grade levels. For example, standards 2.1.F and 2.2.D are included among the standards listed in the Agriculture/Agribusiness Integration curriculum map for Grades 3 – 6, but those standards relate only to High School Math and are not applicable to a school that serves grades K – 6. Record at 3353a, 4505a, 4665a.

The Agriculture/Agribusiness Integration curriculum maps also omit some standards.

For example, the Charter School's second academic goal is to have its students become agriculturally literate which the Second Revised Application indicates would include having students read, at appropriate reading levels, a broad range of informational text in a variety of content areas aligned with core standards. Record at 27021 – 2702a. Reading informational text at age appropriate levels is a part of PA Core Standard for ELA 1.2. However, that standard is not referenced in the Agriculture/Agribusiness Integration curriculum map for Grades K – 2. Record at 3361a – 3365a, 4510a. Similarly, ELA Core Standard 1.4, Writing, appears nowhere on the Agriculture/Agribusiness Integration curriculum map for Grades K – 2, Record at 3361a – 3365a, 4511a; and Standard 1.3, Reading Literature, appears on neither the Agriculture/Agribusiness Integration curriculum map for Grades K – 2 nor on the Agriculture/Agribusiness Integration curriculum map for Grades 3 – 6. Record at 3353a – 3365a, 4511a. The Agriculture/Agribusiness portion of the Charter School's program is not, therefore, fully aligned to the PA Core Standards despite the fact that the goals set forth in the Second Revised Application include providing students and families with “an aligned curriculum.” Record at 2702a.

The lack of alignment to standards indicates that the Charter School has failed to establish its capability, in terms of planning, to provide comprehensive learning experiences to its students. *In re: Thomas Paine Charter School*, Docket No. CAB 2009-04 at 8. A curriculum that does not meet all of the state standards and is not fully aligned with them cannot provide a comprehensive learning experience to students, improve pupil learning, or serve as a model for other schools. *Id.*; see also *In re: Washington Classical Charter School*, Docket No. CAB 2012-05 at 12. When a charter school curriculum fails to properly align with Pennsylvania Core

Standards, the charter school fails to satisfy the requirements for a comprehensive curriculum set forth in the CSL at sections 1717-A(e)(2)(ii) and 1719-A(5) of the CSL. 24 P.S. §§ 17-1717-A(e)(2)(ii); 17-1719-A(5); *see also In re Allentown Engineering Academy Charter School, supra*, at 22; *In re: Education Innovations LAB Charter School*, Docket No. CAB 2007-01 at 13 (curriculum must be verified as aligning to Pennsylvania standards).

And finally, agriculture and agribusiness make up the theme, the niche, the vehicle by which the Charter School intends to provide an opportunity to students to meet academic standards and be successful. Record at 4444a. The core philosophy expressed in the Second Revised Application includes providing students with hands-on learning opportunities outside the regular classroom, Record at 2700a, via an educational program where “[a]griculture and agribusiness themes will permeate the academic standards and serve as the catalyst for students’ school success.” Record at 2704a. The Second Revised Application states that the Charter School’s overarching vision is, among other things, to produce students who, having been immersed in the agricultural surroundings of the community, have a respect and understanding of agriculture’s role locally, across Pennsylvania, and nationwide. Record at 2700a.

Most of the curriculum portion of the Second Revised Application is similar, stating what the charter school would like to do – its goals and aspirations – but failing to offer a sufficient curriculum plan that offers methods for achieving those goals and aspirations. *See* Educational Program portion of Second Revised Application, Record at 2703a – 2707a. The Second Revised Application also quotes the Pennsylvania Core Standards at length, Record at 2705a, 2706a, but these academic standards (defined at 22 Pa. Code § 4.3 as “what a student should know and be able to do at a specified grade level”), *by themselves*, do not constitute a curriculum (defined at

22 Pa. Code § 4.3 as “a series of planned instruction aligned with the academic standards in each subject area that is coordinated and articulated and implemented in a manner designed to result in the achievement at the proficient level by all students.”) Record at 4491a, 4496a, 4499a, 4618a.

As for the Charter School’s agriculture and agribusiness theme and touting of hands-on learning outside of the classroom, there are no lesson plans or instructional timelines included which would indicate where and how those themes and hands-on learning are going to be integrated into the Charter School’s educational programming. Record at 4448a. Rather, the materials which Spartansburg provided include just two sample lesson plans, both for Grades 3 – 5, and both of which are traditional lesson plans that do not involve any hands-on learning outside of the classroom. Record at 3969a – 3987a, 4511a – 4512a.

Furthermore, there is no reference to agriculture in the curriculum maps for Mathematics, ELA, music, art or physical education, despite the fact that the Agriculture/Agribusiness Integration material is not a stand-alone course. Record at 4450a. But integration of that material is not apparent in the four curriculum maps for the four core subject areas (ELA, Mathematics, Science and Social Studies), especially for grades 2, 4, 5 and 6 which do not even reference PA Environment and Ecology Standard 4.4 related to agriculture and society. Record at 4498a – 4499a. Nor is there any identification of hands-on learning outside the classroom with any potential local business partner aside from the designation of Berkey’s Nursery as a “local business connection” in the curriculum map for the interdisciplinary agriculture activity, “Evergreen Trees for Kids,” without any description of what that means except that a visit to the tree farm is listed under Materials/Resources. Record at 3366a, 3368a.

This dearth of information illustrates the Charter School’s failure to develop and integrate its agriculture/agribusiness aspect into the overall curriculum. A single field trip to a tree farm cannot suffice to integrate the entire theme of agriculture/agribusiness into the curriculum. *See In re: Community Service Leadership Development Charter School*, Docket No. CAB 2010-02 at 13 (“one activity per grade does not mean that the theme of community service has been incorporated into the curriculum”); *see also In re: Environmental Charter School at Frick Park...an Imagination School*, Docket No. CAB 2007-05 at 6 – 7 (charter school that intended to focus on the environment presented nothing about how it will integrate an environmental curriculum throughout the core subject areas of the curriculum). The proposed curriculum is, therefore, inadequate as presented and cannot support a finding that Spartansburg is capable, in terms of support and planning, to provide comprehensive learning experiences to students that Spartansburg would be a model for other public schools or that Spartansburg would, to any extent, improve pupil learning. *C.f. In re Duquesne Charter School Founding Group d/b/a Duquesne Charter School, supra*, at 12.

E. Legislative Intent

The General Assembly outlined the intent underlying the CSL in section 1702-A of the CSL, and section 1717-A(e)(2)(iii) requires review of the extent to which an application conforms to that legislative intent. The General Assembly’s intent in authorizing the establishment of charter schools was to accomplish all of the following:

- (1) Improve pupil learning.
- (2) Increase learning opportunities for all pupils.
- (3) Encourage the use of different and innovative teaching methods.
- (4) Create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site.
- (5) Provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system.

(6) Hold the schools established under the CSL accountable for meeting measurable academic standards and provide the school with a method to establish accountability systems.

24 P.S. § 17-1702-A.

As already discussed above, the inadequacies of the proposed curriculum indicate that Spartansburg cannot improve pupil learning. Those same issues prevent Spartansburg from being able to increase learning opportunities for all pupils. Moreover, the Second Revised Application and its proposed curriculum contain no information about what project-based learning opportunities or hands-on learning experiences outside the classroom will exist which opportunities and experiences are part of what the Second Revised Application touts as making the charter school unique. Nor does the Second Revised Application or proposed curriculum indicate clearly how the Agriculture/Agribusiness theme will be integrated across the core subject areas of ELA, Mathematics, Science and Social Studies.

Based on these deficiencies, which have already been discussed in depth above, there is an absence of a comprehensive curriculum in the record in this matter. For that reason, it is impossible to properly evaluate the extent to which the Second Revised Application and proposed charter school would conform to the legislative intent with regard to encouraging the use of different and innovative teaching methods, creating new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site, providing parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system, and holding the Charter School accountable for meeting measurable academic standards. *In re: Community Service Leadership Development Charter School, supra*, at 15. Therefore, Spartansburg has not met its burden as to the legislative intent considerations required under section 1717-A(e)(2)(iii). 24 P.S. § 17-1717-A(e)(2)(iii).

F. Required information

As already mentioned earlier, a charter school applicant must demonstrate the extent to which the application considers the information requested in section 1719-A. Section 1717-A(e)(2)(iii), 24 P.S. § 17-1717-A(e)(2)(iii). While one of the things that must be considered, curriculum, has already been discussed at length above, a few others remain because the District in its Decision found the application to be lacking in the information required by section 1719-A(5), (8), (9), (11) and (14). 24 P.S. § 17-1719-A(5), (8), (9), (11), (14).

1. Mission, education goals and methods of assessing whether students are meeting education goals

Section 1719-A(5) requires an application to include the mission and education goals of the charter school, as well as the curriculum and methods of assessing whether students are meeting educational goals. 24 P.S. § 17-1719-A(5). Curriculum has already been addressed.

The Second Revised Application sets forth the Charter School's mission as follows: to provide families an opportunity to enroll students in a small, rural community school that maintains the longstanding culture of the community and surrounding areas; to provide responsive academic programming for all students; to provide educators a unique, team-oriented workplace where student academic success is paramount; to provide integrated lessons that help students to value and understand the vital role of agriculture, food, natural resources, and associated agribusinesses; to provide opportunities for students to develop leadership skills and experience personal growth; and to partner with local farm, agriculture, natural resource, and other agribusiness in order to provide students hands-on learning opportunities outside the regular classroom, all so that, upon completion of the program, students will have the necessary skills to be highly successful in their middle and high school years, thus preparing them to enter the adult world. Record at 2700a.

Additionally, the Charter School's educational goals are: (1) to ensure that barriers to student learning are addressed in order to increase student achievement; (2) to produce students who are agriculturally literate, understanding the food and fiber system, including history, economic impact, social significance, and environmental significance; and (3) to provide its students and families with an aligned curriculum and professional staff that promote student learning. Record at 2701a – 2702a.

The CSL requires only that the application contain information about the mission and education goals; a school district cannot require more than what the General Assembly set forth in the CSL. *Founding Coalition of the Infinity Charter School supra*, 847 A.2d at 203. In this case, the District found the mission and education goals to be insufficient because the Second Revised Application and proposed curriculum do not support or implement the mission and goals. District Board's Brief at 33. While that conclusion goes to the adequacy of the curriculum, which has already been discussed above, the District's dissatisfaction with the *sufficiency* of the mission and goals is not a basis, under the CSL, for determining that Spartansburg failed to consider the information requested in section 1719-A. In fact, by virtue of the presence of the stated mission and goals in the Second Revised Application, Spartansburg has demonstrated the extent to which it has considered the mission and goals of the proposed charter school, as required by section 1717-A(e)(2)(iii) of the CSL.

With regard to methods of assessment, the Charter School intends to evaluate students using benchmark assessments, quizzes, tests, marking period grades, monthly grade level goal setting meetings, monthly Instructional Support Team meetings with grade level teachers for students who are not meeting goals, monthly goal-setting meetings with individual teachers, lesson study process and evaluation, PSSA results, ACCESS results, an annual Parent

Satisfaction Survey, and quarterly and annual Student Discipline Reports. Record at 2718a, 2725a. However, as discussed above in the context of the inadequacies of the proposed curriculum, the Charter School's curriculum maps for the core academic subjects of ELA, Mathematics, Social Studies and Science left blank the columns in which methods of assessment should be included, with the result that there is no indication in the Second Revised Application of how Spartansburg intends to assess whether students have met their educational goals in those subject areas.

Furthermore, the Second Revised Application includes no information about what project-based learning opportunities will exist and how students will be assessed in the context of project-based learning opportunities. Likewise, there is no indication in the Second Revised Application of what hands-on learning experiences outside the classroom will exist and how students' participation in those experiences will be assessed. Accordingly, the Charter School's statement of its methods of assessment is lacking in content and specificity and does not meet this requirement of the CSL.

2. Community group involvement

Among the information requested in section 1719-A which the District in its Decision found to be lacking is information on the manner in which community groups will be involved in the charter school planning process. 24 P.S. § 17-1719-A(8). In its Decision, the District interpreted this requirement in terms of who drafted the Second Revised Application and how community groups were involved in the planning process and application revisions. Record at 4757a. The District questioned how involved members of the community actually were in the preparation of the Second Revised Application and criticized the "significant" involvement of the Charter School's counsel both in supplying content to and in answering questions about the

Second Revised Application. *Id.* Additionally, the District argues that there is a lack of evidence of community support for Spartansburg. To support that argument, the District asserts that:

[W]hile the Spartansburg community was initially involved in the planning for the proposed charter school, the evolution process from the Charter School's first application (submitted in August of 2014) through the second application (submitted in December of 2014) and ultimately the third application which is being reviewed by this CAB (submitted in August of 2015) shows a decrease of direct community involvement.

District Board's Brief at 38.

The District's handling of this issue is faulty for several reasons. First, it overlooks the language of the CSL which requires the application to obtain information on the manner in which community groups *will* be involved. That is a prospective term, not a retrospective one, and calls for an examination of expected future involvement of community groups in the ongoing charter school planning process and after the charter is granted. *In re: Lincoln-Edison Charter School Appeal*, Docket No. CAB 2000-11 at 22. The CSL contains no language requiring consideration of how community groups have been involved in the preparation of the *application*.

Second, the District's criticism of the extent of the involvement of the Charter School's legal counsel is unreasonable. While the Second Revised Application does evidence the fact that Spartansburg's counsel supplied the text for most of the proposed Board of Trustees and Charter School policies, Record at 3608s – 3788a, 3619 – 3934, 3958 – 3967, 4047 – 4100, 4230 – 4234, 4251 – 4266, 4325 – 4338, it is unreasonable to expect a charter school applicant to have only laypeople prepare such policies and procedures which are the basis for establishing the legal rights and responsibilities of the Charter School's governing board, administrators, faculty and students. While those items comprise a significant portion of the Second Revised Application,

they are also items that may be generic to a great extent because they concern operations of the Charter School separate and apart from the curriculum which its supporters maintain makes it unique and worthy of a charter. The Charter School Law does not require charter school founders to be legal experts. *William Bradford Academy Charter School*, Docket No. CAB 1999-8 at 14. Accordingly, the involvement of legal counsel in the preparation of portions of the Second Revised Application does not indicate a disqualifying lack of community group involvement.

While the legislature has not defined what is meant by “community” or “community involvement,” CAB has concluded in past decisions that it may rely upon other provisions of the CSL for guidance in its evaluation of the revised application. *In re: Leadership Learning Partners Charter School Appeal*, Docket No. CAB 2000-8 at 9. In looking to other provisions of the CSL for guidance as to the presence of “sustainable support,” CAB has looked at the support shown from the community in that context as evidence of the community involvement referenced under section 1719-A. 24 P.S. § 17-1719-A; *see also In re Independence Charter School Initiative*, Docket No. CAB 2000-2 at 11.

With regard to the expected involvement of the community in the charter school planning process, the Second Revised Application enumerates 28 local businesses which have committed to actively provide and support educational experiences for Spartansburg students in order to provide opportunities for every Spartansburg student to gain real world experience that is not typically available as part of a traditional public school education. Record at 2728a – 2729a. A number of local businesses provided letters of support which indicate the same desire to partner with the Charter School. Record at 3027a – 3053a. Additionally, a number of individuals and businesses have pledged monies as donations or loans in order to support the Charter School’s

start-up and operation. Record at 4029a – 4035a. More specifically, the Spartansburg Community Fair Board supports Spartansburg and has contributed funds to cover organizational start-up costs; the Spartansburg Fire Department supports Spartansburg and had provided its facility for regular meetings of the founding group; the Spartansburg Alumni Association has provided support for outreach to graduates; and local government officials, including the Borough Council President, Borough Council and the Mayor, have expressed support for the proposed Charter School. Record at 74a, 93a, 2628a – 2629a, 2632a – 2633a, 2738a.

Spartansburg also intends to have founders, parents and community members as members of the Board of Trustees. Record at 2729a. Moreover, Spartansburg desires to have parents as active participants in the school’s direction to assist in the decision-making process. *Id.* To that end, a Home and School Association (“HSA”) will be established which will include parents, Board members, an administrator, and other community members who support the mission of Spartansburg. Record at 2730a. The HSA will sponsor parent/community meetings to give parents, students and community members the opportunity to communicate their concerns and suggestions, which Spartansburg will utilize to improve its general operations and various programs. *Id.* Parents and guardians will be collaborators in their children’s education, and Spartansburg intends to actively support parents’ participation in their child’s education by encouraging parents to take an active role in school activities, share their knowledge of their children with teachers and counselors, and give staff feedback on their children’s experience and progress at open houses, parent-teacher conferences and other school events. Record at 2720a.

All of the above is evidence of “the manner in which community groups will be involved in the charter school planning process.” 24 P.S. § 17-1719-A. Accordingly, Spartansburg has

met its burden of proof on this element, and for that reasons, the District Board’s decision to the contrary is not supported by the record.

3. Financial plan

This requirement originates in section 1719-A(9) of the CSL, 24 P.S. § 17-1719-A(9), which requires that an application to establish a charter school must include a financial plan.¹¹ The budget submitted by an applicant need only provide sufficient evidence that “the charter school has considered fundamental budgeting issues and has determined it will have the funds to operate.” *In re: Lincoln-Edison Charter School*, Docket No. CAB 2000-11 at 17. The CSL does not require specifics in the budget so long as it can be determined that the applicant is capable of providing a comprehensive learning experience for students. *Central Dauphin School District v. Founding Coalition of the Infinity Charter School*, 847 A.2d 195, 202 (Pa. Cmwlth. 2004).

Spartansburg maintains that its financial plan comports with the requirements of section 1719-A(9) because Spartansburg has more than adequately considered those fundamental budgeting issues and will have the necessary funds to operate. Charter School’s Brief at 27. The budget and financial plan set forth in the Second Revised Application includes five-year (2016 through 2020) projections for enrollment, for both regular and special education students; revenue; expenses, broken down into categories including personnel expenses; contracted services; student activities and food; insurance; consumable supplies; travel, telephone, printing; books/instructional aids; equipment; site costs; debt service; and capital projects fund transfers. Record at 2744a, 4040a – 4044a. The information provided includes detail of the revenue that would be generated by the Charter School and the expenditures it would make. *Id.* This is far

¹¹Section 1719-A(9) of the CSL, 24 P.S. § 17-1719-A(9), also requires an explanation of the provisions which will be made for auditing the charter school; but in its Decision, the District Board found the proposed auditing plan to be acceptable. Record at 4773a.

above the level of detail that the CSL requires. *See Founding Coalition of the Infinity Charter School*, 847 A.2d at 202 (the CSL does not require such specifics in the budget as long as the school board or, on appeal, CAB, can determine that the applicant is capable of providing a comprehensive learning experience for students).

The District Board determined in its Decision, and argues here, that the Charter School's financial plan is inadequate because it fails to consider certain fundamental budgeting issues and because Spartansburg will not have the funds necessary to support a fundamental component of its proposed program. District Board's Brief at 46. More specifically, the District Board argues that: (1) the amount budgeted for financial services is not sufficient to fund all of the services it is intended to provide; (2) the amount budgeted for student services such as field trips is inadequate to fund the hands-on learning opportunities outside of the regular classroom that are a core, central theme of the Charter School's mission; and (3) the budget is based on tuition payments for the projected first-year enrollment of 120 students, a number that the District Board does not believe the Charter School's evidence supports. Record at 4757a – 4760a.

Initially, the District Board's concerns that the Charter School's enrollment projections are unrealistic and undermine the Charter School's revenue projections cannot serve as the basis for finding the Charter School's financial plan to be inadequate. Every charter school applicant must rely on projections of enrollment until the school actually begins operating, and every charter school applicant's budget must rely on those same projections. And yet, as indicated in the discussion of sustainable support, *infra*, the case law has consistently found sustainable support to exist where there are pre-enrollments as low as 34% of the proposed charter school's projected enrollment. *C.f. In re: William Bradford Academy Charter School*, Docket No. CAB 1999-8. If, as the case law indicates, those lower percentages of projected enrollment are

permitted to justify a finding of sustainable support, it would be completely illogical to find that the same lower percentages of projected enrollment seriously undermine the charter school applicant's revenue projections and make the proposed financial plan inadequate. Indeed, in *Founding Coalition of the Infinity Charter School, supra*, 847 A.2d at 200, such projections were deemed adequate, despite the fact that the record contained only 16 letters from students who intended to enroll for a projected enrollment of 120.

Overall, the information Spartansburg provided is similar to the financial information provided in *In re: Infinity Charter School Appeal*, Docket No. CAB 2002-4, which CAB determined was sufficient basis for concluding that the school applicant had "considered fundamental budgeting issues and sufficient funds will be available to operate the charter school." *Infinity Charter School* at 15 – 16. That finding was upheld on appeal. *Founding Coalition of the Infinity Charter School, supra*, 847 A.2d at 202. The Charter School Law requires only that a charter school consider fundamental funding issues and determine that it will have the funds to operate. Spartansburg has considered such issues, as exhibited by its five-year plan. Spartansburg has, therefore, submitted a budget that satisfies the requirements of the CSL.

4. Facility

The District also found the Second Revised Application to be lacking in information related to the facility which Spartansburg proposed to utilize. Section 1719-A(11) of the CSL, 24 P.S. § 17-1719-A(11), requires an application to include a description and address of the physical facility in which the charter school will be located, as well as information about the ownership of and any lease arrangements related to that facility.

During the application process, Spartansburg identified a location for the Charter School, at 138 Jefferson Street, Spartansburg, Pennsylvania ("the Jefferson Street property"), which is

presently a vacant parcel of land. Record at 2578a, 2748a, 4423a. Spartansburg also provided a nonbinding letter of intent, signed by the lessors in December 2014, outlining their intent to lease the Jefferson Street property to Spartansburg, and the terms and conditions of that leasehold; the letter of intent is addressed to Scott W. Morton, Chairman of the Spartansburg Board, and Mr. Morton signed it on December 31, 2014, accepting it. Record at 4114a – 4116a, 4423a.

With regard to the structure to be placed on the Jefferson Street Property, Spartansburg indicated that it will place 11 leased modular classrooms on the Jefferson Street property until a permanent structure is built. Record at 2578a – 2580a, 2748a, 4423a. Spartansburg also provided information indicating that the Jefferson Street property has electrical service, public sewage and a water supply, Record at 2578a, and that contractors have offered to make the connections of the modular classrooms to those services, as well as to construct a foundation, free of charge or pro bono. Record at 2583a, 4432a. Furthermore, at the hearing on the Second Revised Application, the District acknowledged that the information provided included quotes for electricity, water and sewer. Record at 4432a. Additionally, the Charter School presented a projected site layout for the Jefferson Street property, Record at 4719a (delineated the “Berkey Property” in the exhibit), as well as a plan indicating how the modular units would be set up. Record at 4111a, 4482a – 4484a.

CAB has previously determined that a letter of intent to lease a proposed charter school facility is sufficient evidence of a location for the charter school to comply with the CSL. *William Bradford Academy Charter School*, CAB Docket No. 1999-8 at 13. Furthermore, in *In re: Phoenix Academy*, CAB No. 1999-10, CAB stated that:

The Charter Law does not require that a lease be signed for a facility but requires that the facility be identified and the ownership and lease arrangements be described in at least a general way.

Phoenix Academy at 21, citing 24 P.S. § 17-1719-A(11). As already stated above, Spartansburg identified the facility and described the ownership and lease arrangements “in at least a general way,” and the Charter School’s evidence included a letter of intent to lease the facility. By providing all of the above information about the facility, the Charter School provided both a description and address of the physical facility, as well as an indication of the ownership of the facility and any proposed lease arrangements. Accordingly, Spartansburg has met the requirements of section 1719-A(11) of the CSL, 24 P.S. § 17-1719-A(11), pertaining to facility.

Nonetheless, citing *In re: Environmental Charter School*, CAB Docket No. 1999-14 at 17, the District argues that Spartansburg has not identified and/or acknowledged that work will be required to prepare the Jefferson Street property for use as a school because the financial information submitted pertaining to the lease and installation of the modular units does not include permits, ramp removal, stairs, foundation systems, temporary power, skirting, engineering, taxes or utility hookups. District Board’s Brief at 48 – 49. The District asserts that these unknown factors indicate that the Charter School has failed both to acknowledge that there is work to be done and to budget for that work which the District believes supports the conclusion that Spartansburg has failed to submit sufficient information regarding its proposed physical facility. District Board’s Brief at 49.

In making its argument, the District reads far more into section 1719-A(11), 24 P.S. § 17-1719-A(11), than the language of that provision requires. Moreover, the Charter School’s representatives testified on behalf of Spartansburg that the modular units would be set up on a foundation that is already in place, subdivided into necessary classrooms, office and health suites, and connected to the necessary utility services. Record at 2578a, 2579a, 2582a – 2583a, 4432a, 4480a. Certainly that information amounts to an acknowledgement that work needs to be

done in order to prepare the Jefferson Street property for use as a school. Accordingly, Spartansburg has provided sufficient identification and/or acknowledgement that work will be required to prepare the Jefferson Street property for use as a school. Spartansburg has also met its burden as to its proposed facility, and consequently the District Board's denial of the application for facility shortcomings is rejected.¹²

5. Extracurricular activities

Fianlly, we address whether any agreements have been entered into or plans developed with the local school district regarding participation of the charter school students in extracurricular activities within the school district. 24 P.S. § 17-1719-A(14). In its Decision, the District Board briefly discussed extracurricular activities, noting the absence of funding specifically for extracurricular activities in the proposed Charter School budget and pointing out that there is no indication in the Second Revised Application where such activities would take place since the proposed facility will have no cafeteria or gymnasium. Record at 4761a. While, in its discussion of extracurricular activities, the Decision did not actually state that the Second Revised Application does not meet the requirements of section 1719-A(14) of the CSL, 24 P.S. § 17-1719-A(14), *see* Record at 4761a, in its conclusions, the Decision enumerated the requirements of the CSL that the Second Revised Application satisfied, and this provision was not among them. Record at 4772a – 4773a.¹³

¹² When it comes to the facility requirements of the CSL, CAB has previously concluded that: "for approval of a Charter School, the legislature intended this law to be liberally interpreted to encourage the development and growth of such schools." *In re: Legacy Charter School*, Docket No. CAB 2000-14 at 8; *see also In re: Leadership Learning Partners Charter School*, Docket No. CAB 2000-8 at 13.

¹³ Although the District arrived at this conclusion in the Decision, the District did not raise the issue of extracurricular activities in the District Board's Brief which could be considered a waiver of that issue. *See Com. v. Manigault*, 462 A.2d 239, 241 (Pa. 1983) (where issues raised below were not briefed or argued on appeal, the issues are waived).

The Second Revised Application indicates that Spartansburg will offer a variety of after-school activities that extend and complement in-school time activities, Record at 2730a, and then lists a number of possible types of such activities. Record at 2731a. The Second Revised Application further states that “[a]t this time, no agreements or plans have been entered into or developed with the Corry Area School District for activities offered within the district.” *Id.* Per its plain language, subsection 1719-A(14), 24 P.S. § 17-1719-A(14), requires no more than that. Accordingly, Spartansburg has met its burden on this point, and the District Board’s conclusion to the contrary is incorrect.

CONCLUSION

Based upon the foregoing analysis, the record supports the District Board's denial of the Charter School's Second Revised Application because the proposed curriculum is inadequate as presented for reasons including, but not limited to, the fact that it is not age-appropriate and is not fully aligned to PA academic standards. It follows that the proposed curriculum cannot support a finding that Spartansburg is capable, in terms of support and planning, to provide comprehensive learning experiences to students; that Spartansburg would be a model for other public schools; or that Spartansburg would improve pupil learning. Finally, because of the problems with the proposed curriculum, it is impossible to properly evaluate the extent to which the Second Revised Application and proposed charter school would conform to the legislative intent expressed in the CSL. Accordingly, the following Order will issue:

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

Spartansburg Community Charter School,	:	
Petitioner	:	
	:	CAB Docket No. 2016-02
v.	:	
	:	
Corry Area School District,	:	
Respondent	:	

ORDER

AND NOW, this 5th day of January, 2017, based upon the foregoing and the vote of this Board, the appeal of the Spartansburg Community Charter School is **DENIED**.¹⁴

For the State Charter School Appeal Board



Chairman

For Petitioner: Joshua E. Pollak, Esquire
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For Respondent: Timothy Sennett, Esquire
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Date of mailing: January 5, 2017

¹⁴ At the Charter School Appeal Board meeting on December 6, 2016, members voted 4-2 to deny the appeal of the Spartansburg Community Charter School with members Miller, Peri, Rivera, and Yanyanin voting to deny and members Cook and Munger voting to grant the appeal.