

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

**In Re: Creative Educational Concepts :
Charter School :
Appeal from Revocation of :
Charter by the Chester Upland :
School District :**

Docket No. CAB 1999-15

OPINION AND ORDER

I. Synopsis

The Creative Educational Concepts Charter School (“CEC”) brings this appeal to challenge the decision of the Board of Control (“Board”) of the Chester Upland School District (“School District”) revoking its charter to operate a charter school within the School District. CEC seeks to have the State Charter School Appeal Board (“CAB”) reverse the revocation of its charter alleging that the Board’s decision is not supported by substantial evidence and is contrary to the Charter School Law. The School District, on the other hand, maintains that the revocation of CEC’s charter was necessary because the school’s facility represented a serious risk to the health and safety of its students and staff. Additionally, the School District asserts that the revocation of CEC’s charter was appropriate because the charter school has not complied with the terms of its charter.

On November 8, 1999, both the School District and the CEC presented oral arguments to the CAB regarding the revocation of CEC’s charter to operate a school within the District. On October 14, 1999, the CEC charter school filed a Motion to Supplement the Record with evidence CEC maintains was not available at the time of the hearing before the Board. Also, on November 10, 1999, following the hearing before the CAB, the School District filed a Motion to Supplement the Record to provide the CAB members with evidence relating to a question posed by a board member at the time of the hearing.

As the reviewing tribunal, the CAB must give due consideration to the findings of the local school board and specifically articulate its reasons for agreeing or disagreeing with those findings in its written decision. 24 P.S. § 17-1729-A(d). The CAB must also determine whether Motions to Supplement the Record filed by both the Petitioner and the School District should be granted. The granting of such motions is within the discretion of the CAB, provided the supplemental information was previously unavailable. 24 P.S. § 17-1729-A(d).

The CAB finds that CEC violated material terms of its charter with the School District and various provisions of the Charter School Law. Thus, the CAB concludes that

the Board's revocation of CEC's charter was proper and should be upheld for the reasons stated herein. Additionally, the CAB denies both the Petitioner's and the School District's Motions to Supplement the Record.

II. Findings of Fact

The State Charter School Appeal Board finds the following:

1. Petitioner is the Creative Educational Concepts Charter School ("CEC"), which was operated in the Community Center and basement of St. Daniel's United Methodist Church, 315 Edwards St., Chester, Pennsylvania, Delaware County. (*See* CEC Compl. ¶ 1.)
2. Respondent is the Board of Control of the Chester Upland School District ("School District").
3. The CEC charter school applied for a charter to operate within the School District in November 1997. (*See* N.T. of CAB Hr'g Tr. of 11-8-99 at p. 135.)¹ On February 26, 1998, the Board of Control of the School District ("Board") granted CEC a charter to operate a charter school. (*See* CEC Compl. ¶ 1 and Board Resolution Finding of Fact at ¶ 2.)
4. On November 10, 1998, Timothy Daniels of the Pennsylvania Department of Education sent a letter to Dr. Juan Baughn, Interim Superintendent of the Chester Upland School District, identifying various concerns about CEC's operations. (*See* Letter from Daniels to Baughn of 11-10-98; School District Hr'g Ex. No. 7; and Resolution Finding of Fact at ¶ 7.)
5. At a November 19, 1998 meeting, the Board reviewed the matter of CEC and passed a resolution requiring CEC to comply with the terms of its charter, the Board policy and a checklist for the operation of charter schools on or before December 19, 1998. (*See* School District Hr'g at 8:19; School District Hr'g Ex. No. 3; and Resolution Finding of Fact at ¶ 5.)
6. On or around December 17, 1998, CEC and the School District jointly resolved to delete grades 7-12 from the charter and to allow CEC to operate grades K-6, effective January 1, 1999. (*See* CEC Compl. ¶ 3 and Resolution Finding of Fact at ¶ 6.)
7. During the period relevant to this appeal, grades K-1 at CEC were taught in two classrooms in the basement of St. Daniel's United Methodist Church, 315 Edwards Street, Chester, Pennsylvania. (*See* CEC Compl. ¶ 25.)

¹ The abbreviation "N.T." refers to the Notes of Testimony recorded at the November 8, 1999 hearing before CAB.

8. The Board requested a team of professionals from Widener University to evaluate the CEC charter school. Dr. Steven Wilhite, Dean of the School of Human Service Professions at Widener University, chaired the evaluation team. (*See* CEC Compl. ¶¶ 23 & 24 and Resolution Finding of Fact at ¶ 8.) Dr. Wilhite also testified at the Board hearing on June 29, 1999, regarding the findings of the evaluation team. (Resolution Finding of Fact at ¶ 11.)
9. On May 14, 1999, the Widener team visited the CEC charter school and team members observed the school facilities and classroom instruction, interviewed school officials and teachers and reviewed CEC's financial records. (*See* Widener Report (School District Hr'g Ex. No. 8; Bd. Hr'g Ex. (Chester Upland) No. 8 and Resolution Finding of Fact at ¶ 9.)
10. The CAB adopts the following factual findings from the Report of the evaluation team. The CAB further notes that the following facts reflect the condition of CEC at the time of the hearing before the School District and the hearing before the CAB.
 - a. The confined space of the school facilities severely limits ingress and egress and represents a major threat to the safety and well being of the students and staff.
 - b. CEC is not delivering the innovative educational program, curriculum and computer-based instruction specified in the charter application.
 - c. It is unlikely that CEC could deliver this type of educational program even if the school was relocated to an appropriate facility. The charter application described individualized computer-assisted instruction but CEC lacks the facilities, the computer equipment and technology, and the staff expertise to deliver such an educational program. At the time of the evaluation, there were eight computers in the school, all of which belonged to the Community Center of St. Daniel's Methodist Church.
 - d. Instructional materials needed to educate students were minimal and many resources available to students in regular public schools were lacking, particularly materials regarding effective delivery of basic education skills. For example, there were no reference materials, age-appropriate software, software to support computer-assisted instruction and only one VCR, one audiotape player and one typewriter in the classrooms. Additionally, there was no evidence that CEC had purchased instructional materials other than a basic reading series.
 - e. CEC failed to fulfill several documentation obligations required by the Charter School Law including gaps in school records with regard to monthly certification and enrollment, projected quarterly cash flow reports

and records of criminal history and child abuse clearances for teachers and staff.

- f. The CEC charter school did not possess a surety bond or liability insurance. Additionally, CEC failed to have an outside agency conduct an independent audit of the school's finances and failed to invest funds as required by the charter.
- g. Seventy-five percent of the teachers employed by CEC were not certified to teach by the Commonwealth of Pennsylvania as required by the Charter School Law. Of the thirteen teachers employed at the CEC charter school and mentioned in the Widener Report, the team found that only three of these individuals were certified by the Commonwealth of Pennsylvania to teach at the elementary school level. Additionally, CEC could not provide documentation of criminal history background-checks and child abuse clearance-statements for some of these same teachers employed by the charter school.
- h. The financial position of the school was precarious at best.
- i. At the time of the hearing before the School District and the CAB hearing, CEC was not delivering any of the eleven goals specified in the charter application. Moreover, the operation and structure of CEC was not designed or structured to effectively deliver the twenty-nine student educational attainment goals specified in the charter at any time during the operation of the school.
- j. Additionally, individualized education programs (IEPs), as required by the Charter School Law and federal law, did not exist for students.

(*See* Widener Report (School District Hr'g Ex. No. 8) & Resolution Findings of Fact ¶¶ 12-23.)

11. The Board sent CEC a Notice of Revocation on June 9, 1999, notifying the charter school that a hearing would be held before the Board on June 29, 1999 with respect to the possible revocation of CEC's charter. (*See* CEC Compl. ¶ 4.) The focus of the Board's inquiry at the Revocation hearing, as specified by the Notice of Revocation, was as follows:
 - a. The report of the Widener team's evaluation of the CEC charter school;
 - b. The lease or purchase of real estate for use by the CEC school;
 - c. The CEC charter school's failure to comply with the terms of the charter application and the charter agreement between CEC and the School District; and

- d. The purchase of computers, consulting services, instructional services, and compensation paid to consultants and other financial transactions.

(*See* Notice of Revocation of June 9, 1999.)

- 12. On May 29, 1999, the School District published legal notice in the Delaware County Times of the hearing scheduled for June 28, 1999 before the Board to consider the revocation of CEC's charter. Additionally, the notice invited members of the school district community to provide comments to Superintendent of Schools, Dr. Sterling I. Marshall. This notice was published in the Delaware County Times nearly two months before the Board issued its Resolution revoking CEC's charter. (*See* School District Hr'g Ex. No. 2 (attached photocopy of notice).)
- 13. On June 29, 1999, the Board held a hearing regarding the revocation of CEC's charter. (*See* CEC Compl. ¶ 5.) Both the CEC and the School District made opening statements, examined witnesses, presented evidence and made closing statements in this matter. (*See* School District Hr'g Tr. of 6-29-99.)
- 14. The July 28, 1999 Resolution issued by the Board effectively revoked CEC's charter. (*See* Resolution at p.1 and CEC Compl. ¶¶ 6 & 7.)
- 15. On August 26, 1999, CEC appealed the Board's revocation of the charter to the State Charter School Appeal Board ("CAB") and the CAB accepted the appeal on October 8, 1999.

III. Conclusions of Law

- 1. The Charter School Law, Act of June 19, 1997, P.L. 225, No. 22, 24 P.S. § 17-1729-A ("Charter School Law"), governs the revocation of a charter granted to a charter school in Pennsylvania. *See* 24 P.S. § 17-1729-A.
- 2. Section 17-1729-A of the Charter School Law sets forth the sole bases by which a board of local school directors may revoke a school's charter. *See* 24 P.S. § 17-1729-A(a)(1)-(6).
- 3. In determining whether a local school district's revocation of a charter is appropriate, the CAB shall give due consideration to the findings of the local school board and specifically articulate its reasons for agreeing or disagreeing with the local board of school directors. *See* 24 P.S. § 17-1729-A(d).
- 4. In determining whether the revocation of a school's charter was appropriate, the CAB shall review the record and has the discretion to supplement the record with information that was previously unavailable and may consider the

charter school plan, annual reports, student performance and employee and community support. *See* 24 P.S. § 17-1729-A(d).

5. Section 17-1729-A of the Charter School Law permits a charter to remain in effect until final disposition of the charter school's appeal of the revocation by the CAB. *See* 24 P.S. § 17-1729-A(f).
6. Section 17-1729-A(g) permits a board of local school directors to take immediate action in revoking the charter of a charter school if the operation of that school represents a serious risk to the health and safety of its students and staff. *See* 17-1729-A(g).
7. In revoking a charter, the local school district shall afford basic due process rights to the charter school, namely, notice and an opportunity to be heard. The Charter School Law, however, does not require a local school district to provide an operating charter school with notice of probation. *See* 24 P.S. § 17-1729-A(c).
8. Once a charter is granted, the charter school is required to comply with its terms and to achieve the goals specified therein and violation of the material terms of the charter is a proper basis for revocation. *See* 24 P.S. § 17-1729-A(a)(1).
9. The operation of a charter school must meet generally accepted standards of fiscal management and/or audit requirements and the failure to meet these standards and/or requirements is a proper basis for revocation of the charter. *See* 24 P.S. § 17-1729-A(a)(3).
10. A charter school is not required to obtain the Secretary of Education's permission to deviate from the standard school year of 180 days of instruction as required by the Public School Code and the regulations promulgated by the State Board of Education in the Pennsylvania Code. *See* 24 P.S. § 17-1715-A(9).
11. Giving due consideration to the Widener Report and the findings of the Board, the CAB concludes that the revocation of CEC's charter was proper and in accordance with the bases set forth in § 17-1729-A(a)(1)-(6) of the Charter School Law.

IV. Discussion

The Pennsylvania General Assembly enacted the Charter School Law to provide school children with additional opportunities to attend public schools that offer diverse and innovative educational techniques, operating independently of the traditional state public school system. The Charter School Law, however, requires charter schools to comply with their charters, various provisions of the Public School Code and other

Pennsylvania laws and regulations. *See* 24 P.S. §§ 17-1715-A, 17-1729-A(a)(1)-(6). Accordingly, a school district may revoke a charter granted to a school if the charter school has violated the terms of the charter, the Charter School Law or committed other legal violations. *See* 24 P.S. § 17-1729-A. In revoking a school's charter, the School District shall give the charter school reasonable notice of a public hearing regarding revocation and allow the charter school to offer testimony. *See* 24 P.S. § 17-1729-A. Specifically, the Charter School Law permits a local school district or board of directors to revoke a school's charter for the following reasons:

- (1.) One or more material violations of any of the conditions, standards or procedures contained in the written charter signed pursuant to section 1720-A.²
- (2.) Failure to meet the requirements for student performance set forth in 22 Pa. Code Ch. 5 (relating to curriculum) or subsequent regulations promulgated to replace 22 Pa. Code Ch. 5 or failure to meet any performance standard set forth in the written charter signed pursuant to 1716-A.³
- (3.) Failure to meet generally accepted standards of fiscal management or audit requirements.
- (4.) Violation of provisions of this article.
- (5.) Violation of any provision of law from which the charter school has not been exempted, including Federal laws and regulations governing children with disabilities.
- (6.) The Charter School has been convicted of fraud.

24 P.S. § 17-1729-A(a)(1)-(6). Thus, relying on this provision of the Charter School Law, the CAB finds that the revocation of CEC's charter was appropriate.⁴

A. Notice of Probation

² 24 P.S. § 17-1720-A (relating to the term and form of the charter).

³ 24 P.S. § 17-1716-A. (relating to the powers of the Board of Trustees of a charter school)

⁴ The School District found that CEC was a serious risk to the health and safety of its students and staff and thereby relied on § 17-1729-A(g) to revoke CEC's charter. While we agree that the charter school was a serious threat or risk to the health and safety of students and staff, we further conclude that the School District's revocation of CEC's charter was appropriate because CEC had violated material terms of its charter and various other provisions of the Charter School Law.

CEC's initial allegation is procedural and concerns Finding of Fact #5⁵ of the Board's Resolution regarding the Notice of Probation given to the charter school prior to the Notice of Revocation and subsequent hearing before the Board. (*See* N.T. of CAB Hr'g at p.104 & CEC Compl. ¶¶ 84-86.) Finding of Fact # 5 states that on November 19, 1998, the Board placed CEC on probation, requiring the Petitioner to comply with the terms of the charter, the Board policy and a checklist for the operation of charter schools. (*See* Board Resolution Finding of Fact at ¶ 5.) At the CAB hearing on November 8, 1999, CEC contended that the School District failed to provide them with notice that the charter school was on probation and required to "straighten up and fly right" and such failure violated the Charter School Law. (*See* N.T. of CAB Hr'g at 9, 104.) Additionally, in its Complaint, CEC stated that the School District failed to present evidence that supports Finding of Fact # 5. (*See* CEC Compl. ¶¶ 84-86).

Giving due consideration to the certified record and the evidence presented by both parties, the CAB finds that the Board's November 19, 1998, Resolution was worded in such a manner that CEC should have been alerted to the fact that the continuation of its charter was contingent upon satisfying requirements necessary for the proper operation of a charter school. Finding of Fact # 5 demonstrates that the School District questioned CEC's compliance with the material terms of its charter. (*See* School District Hr'g Ex. No. 3.) While the Board did not use the word "probation" specifically, the actual language of the resolution is clear, unambiguous and indicates that the continued operation of the CEC charter school was contingent upon CEC's compliance with the terms of the charter, the Board policy and the charter school checklist. Specifically, the language of the Board's resolution from the November 19, 1998 meeting states, in pertinent part:

FURTHER RESOLVED, that on or before December 17, 1998, the Creative Educational Concepts Charter School shall comply with

⁵ Specifically, Finding of Fact # 5 in the Board's July 28, 1999 Resolution states:
Footnote cont.:

On November 19, 1998, the Board of Control of the Chester Upland School District placed the Creative Educational Concepts Charter School on probation requiring the compliance by Creative Educational Concepts Charter School with the terms of the Charter, the policy of the Board of Control relating to Charter Schools, and the checklist adopted by the School District for compliance with the Charter School Law and the policy of the Chester Upland School District.

See July 28, 1999 Board Resolution Finding of Fact at ¶ 5.

Further, it should be noted that all references to particular Findings of Fact are to those Findings of Fact contained in the July 28, 1999 Board Resolution revoking CEC's charter.

the terms of the Charter, the Board Policy and Check List for the operation of Charter Schools. In the event that the Charter School shall fail to comply with the terms of the Charter, the Policy and Check List, the Superintendent and Chairman of the Board of Control shall have the authority to discontinue payments to the Charter School and take such other action as may be appropriate on behalf of the School District.

(*See* School District Hr'g Ex. No. 3.) The CAB notes that the School District referred to the November 19, 1998 resolution and this language during its presentation to the Board at the June 29, 1999 Revocation Hearing. (*See* N.T. of School District Hr'g at pp.8, 12.) Moreover, the CAB notes that the November 19, 1998 resolution, passed six months prior to the Revocation Hearing, indicates that there were ongoing problems with the operation and structure of CEC. Thus, the CAB finds that this language gave CEC sufficient notice that the revocation of its charter was possible if it failed to fulfill the terms of the November 19, 1998 resolution.

Finally, the CAB notes that the Charter School Law does not require local school districts or school boards to provide an operating charter school with a notice of probation. Rather, the Charter School Law states, in relevant part:

Any notice of revocation or nonrenewal of a charter given by a local board of school directors of a school district shall state the grounds for such action with reasonable specificity and give reasonable notice to the governing board of the charter school of the date on which a public hearing concerning the revocation or nonrenewal will be held.

See 24 P.S. § 17-1729-A(6)(c). The CAB concludes that the Board acted properly in that it provided the Petitioner with a Notice of Revocation stated with reasonable specificity and with sufficient time to prepare for the June 29, 1999 Revocation Hearing. Consequently, the Board's November 19, 1998 Resolution appears to have been an additional measure of notice afforded by the Board. For all the above reasons, the CAB concludes that the Board's failure to specifically state that it was placing CEC on probation was not a violation of the Charter School Law or CEC's procedural rights. Rather, we find that proper notice was indeed given.

B. The Revocation of CEC's Charter

The primary issue in this appeal is whether the July 28, 1999 Resolution revoking CEC's charter was appropriate and in accordance with the provisions of the Charter School Law. As stated previously, section 17-1729-A(a)(1)-(6) sets forth the sole reasons for which a charter may be revoked by a board of school directors. The Charter School Law also states that the charter shall remain in effect until final disposition by the appeal board. *See* 24 P.S. § 17-1729-A(f). There is, however, one exception to this general rule.

A local school district or board of directors may take immediate action if the health and safety of the school pupils, staff, or both is at serious risk. *See* 24 P.S. § 17-1729-A(g).

Accordingly, CEC contends that the Board's Finding of Fact # 12⁶ that the facility represented serious risks to the health and safety of students and staff was erroneous and contrary to the evidence and other findings made by the Widener evaluation team. In particular, CEC alleges that the Widener team did not find the Petitioner's school facilities to represent a serious risk to the health and safety of the students but merely to be a potential threat. (*See* N.T. of CAB Hr'g at p.105.) In giving due consideration to the Widener Report, the CAB adopts the findings of the evaluation team as their own and concludes that those findings support the revocation of CEC's charter to operate a school.

1. Material violations of any conditions, standards or procedures contained in the written charter.

The Charter School Law provides an extensive application procedure before an applicant may be granted a charter and permitted to operate a school. *See* 24 P.S. §§ 17-1717-A, 17-1719-A. Once a charter is granted, the charter school is required to comply with its terms and to achieve the goals specified therein. Thus, a violation of the terms specified in the charter is a proper basis for revocation.

To begin, the CAB notes that the findings of the Widener Report indicate that the school facility, particularly the basement of St. Daniel's Methodist Church, represented a potential threat to the health and safety of CEC's students and staff. (*See* School District Hr'g Ex. No. 8 at p.3, 8.) Because CEC was not an ideal educational setting and did represent a risk, potentially or otherwise, to the health of students and staff members, the revocation of the school's charter was appropriate in these circumstances.

As specified by the evaluation team in the Widener Report, the team found that the CEC school facility was the windowless basement room and Community Center of the St. Daniel's Methodist Church. (*See* School District Hr'g Ex. No. 8 at p.8.) Additionally, the team found that the confined space of the kindergarten classroom

⁶ Finding of Fact # 12 revoking CEC's charter states, in pertinent part:

With reference to the facilities . . .

The team had great concerns about the severe limitations on ingress and egress from the basement, *which posed a major threat to the safety and well being of the students.*

These facilities deficiencies violate the Charter application and the Charter Agreement and Act 22 of 1997, § 1729-A(g) relating to health and safety risk[s] to students of a Charter School.

See July 28,1999 Board Resolution Finding of Fact at ¶ 12 (emphasis supplied) (internal citations omitted).

greatly limited the ingress, egress and movement of the children throughout the school day. (*See id.*) The coatroom adjacent to the first grade classroom was unlighted and the furniture was in need of repair. (*See id.*) The remaining classrooms were subdivided portions of a large all-purpose room in the Community Center, in which children sat in folding chairs at long tables because there were no individual desks. (*See id.*) The evaluation team concluded that the limited space of the classroom, particularly for kindergarten and first grade students, “represent[ed] major threats to the safety and well-being of the students” and was “clearly inadequate and potentially [dangerous].” (*See id.* at 3,8.) While the CAB agrees that this school facility is clearly inadequate and not the appropriate educational setting for charter school students, the CAB cannot find that these findings demonstrate that the school was a serious risk to the health and safety of the students and staff.⁷ Additionally, the CAB finds that this failure to have an appropriate school facility to be a violation of the terms of the written charter and supports the revocation of CEC’s charter.

As a material violation of the charter agreement, the CAB finds that the revocation was proper and that the Board’s reliance on the evaluation team’s findings as to the serious threat or risk to the health and safety of the students and staff of the CEC School was not erroneous. At this point, the CAB notes that CEC planned to move the charter school to a different facility for the subsequent school year, in particular, to a facility located at 408 Avenue of the States. (*See CEC Compl. ¶ 65 & N.T. of CAB Hr’g at p.108.*) The CAB finds, however, that this issue is not pertinent to the disposition of this appeal, primarily because CEC sought to renovate this property for future use and does not affect the operation of the charter school directly during the time-period relevant to this appeal. Thus, the CAB concludes that the inadequacy of the facilities located at St. Daniel’s Methodist Church to be a material violation of the written charter.

⁷ Additionally, the CAB notes that CEC did not contest any of the findings of the Widener Report at the June 29, 1999 Revocation Hearing before the Board. (*See N.T. of Footnote cont.*:

School District Hr’g at p. 22.) Moreover, CEC acknowledged that the CEC’s school facility and educational program contained several deficiencies and shortcomings. (*See N.T. of School District Hr’g at p. 53.*)

At the Revocation Hearing before the Board on June 29, 1999, counsel for CEC attempted to introduce evidence and testimony concerning an agreement between CEC and the Archway Charter School. (*See School District Hr’g Tr. at pp. 32, 47-49, 52-56, 60-61, 64-65, 67-68, 70, 72, 75, 77, 81, 88, 107, and 121-123.*) Similar to the allegations regarding the property at 408 Avenue of the States, the CAB finds that the Board properly sustained the School District’s objections to this evidence and testimony at the June 29, 1999, Revocation Hearing because this information does not pertain to the operation of CEC during the 1998-1999 school year. (*See id.*) Rather, this information was intended to demonstrate CEC’s attempt to correct acknowledged deficiencies and shortcomings for the upcoming school year.

In addition to asserting that the Board did not have substantial evidence to find that the CEC School was a serious risk to the health and safety of its students, CEC also alleges that the Board's Finding of Fact # 13⁸ concerning CEC's curriculum and availability of instructional materials is incorrect and contrary to the weight of the evidence. (*See* N.T. of CAB Hr'g at p.112 & CEC Compl. ¶¶ 58-60.) Furthermore, in its Complaint, CEC asserts that the Board failed to determine whether CEC was educating its students properly but simply found that the charter school was not delivering its educational objectives. (*See* CEC Compl. ¶ 60 & Board Resolution Finding of Fact at ¶¶ 14, 25.) Accordingly, the Petitioner maintains that the CAB should overrule the Board's revocation of the charter because the school was educating its students, the students were better off at CEC and that the students' parents were satisfied with CEC's operation. (*See* N.T. of CAB Hr'g at p.112.)

Giving due consideration to the record and the findings of the evaluation team as required by § 17-1729-A(d) of the Charter School Law, the CAB concludes that the following findings of the Widener Report also represent material violations of the written charter agreement between CEC and the School District. First, the Widener Report indicates that instructional materials for students in all grades were minimal and based on what teachers could obtain as samples from various publishers. (*See* Widener Report at p.3-4, School District Hr'g Ex. No. 8.) Second, the Widener Report states that no reference materials were present in the school, trade books and other learning materials were limited, audio-visual equipment was minimal and there was no evidence of age-appropriate educational software for students to use. (*See* Widener Report at p.4, School District Hr'g Ex. No. 8.) Moreover, the Widener Report demonstrates that the innovative educational program and computer-assisted instruction promised in the charter

⁸ Finding of Fact # 13 in the Board's July 28, 1999 Resolution revoking CEC's charter states, in relevant part:

With reference to instructional materials, the team found that they were very limited and varied . . . There were no reference materials . . . and other materials to support independent student learning were minimal.

The team found no evidence of age appropriate educational software or software to support computer-assisted instruction.

The computers observed were owned by the Community Center.

The team also found that the individualized program of instruction, based on computer-assisted instruction, that the Charter School Application described as the major distinguishing feature of the proposed school is not in evidence.

In these areas, the Creative Educational Concepts Charter School is not in compliance with the Charter Application . . .

See July 28, 1999 Board Resolution Finding of Fact at ¶ 13.

application were not being delivered. (*See* Widener Report at p.4-5, School District Hr'g Ex. No. 8.) The eleven educational goals and the twenty-nine student-attainment goals specified in the charter application were not being met. (*See* Widener Report at p.4, School District Hr'g Ex. No.8.) In fact, the Widener team found that the eight computers present in the school were actually the property of the Community Center of St. Daniel's Methodist Church. (*See* Widener Report at p.4, School District Hr'g Ex. No.8.) Other findings made by the Widener team include the lack of IEPS for special needs students, the failure to implement student assessment instruments and that the school's teachers were unaware of a student tutoring program included in the charter application, which are all material violations of the terms of CEC's charter and thereby, sufficient to support revocation. (*See* Widener Report at p.5, School District Hr'g Ex. No.8.)⁹

Based on the extensive findings of the evaluation team, the CAB determines that the Board's Finding of Fact # 13 was supported by substantial evidence. Moreover, the CAB fails to see how the CEC charter school can properly educate its students and comply with the terms of a written charter agreement based on an innovative educational philosophy using computers when it is clear that so many aspects of the educational program are deficient or nonexistent. Consequently, the CAB concludes that the above-mentioned findings clearly demonstrate that CEC violated numerous provisions of the written charter agreement between the Petitioner and the School District and consequently, the Board's revocation of CEC's charter was proper.

2. Violations of generally accepted standards of fiscal management or audit requirements.

Additional support for the revocation of CEC's charter stems from the fact that the charter school failed to meet several of the Charter School Law's documentation requirements regarding the fiscal management of a charter school. In its' report, the evaluation team concluded that CEC's financial position was precarious at best and warranted further investigation. (*See* School District Hr'g Ex. No. at p.9.) While at the hearing before the CAB on November 8, 1999, CEC maintained that the charter school was financially solvent, there is no record or evidence to support this assertion. The findings of the evaluation team indicate that the school's financial affairs were insecure and uncertain. First, the Widener Report states that the school was operating at a loss and that if it continued to do so, there would be a deficit capital position at the end of the year. (*See id.* at 7.) Second, the evaluation team found that CEC could not produce all the necessary monthly certifications of enrollment and that the quarterly cash flow reports were not available. (*See id.*) Additionally, the evaluation team found no evidence documenting the existence of a surety bond and found that the necessary liability insurance had been cancelled for lack of payment. (*See id.* at 8.)

⁹ At this time, the CAB would also note that these findings indicate that CEC failed to meet the requirements for student performance set forth in 22 Pa. Code Ch. 5 (relating to curriculum) and subsequent regulations and violated those provisions of law governing regulations of children with disabilities.

Based upon these findings contained in the Widener Report and our review of the record, we adopt them and find that there is sufficient evidence to indicate that CEC failed to implement generally accepted standards of fiscal management or audit requirements as required by the written charter agreement and the Charter School Law. Accordingly, the CAB finds that the inadequacy of CEC's financial affairs is unacceptable and supports the Board's revocation of the school's charter.

3. Miscellaneous Allegations

The CAB concludes that the following CEC allegations do not substantively or procedurally affect the outcome of this appeal. However, for purposes of completeness and clarity, we will discuss them briefly.

a. Length of Time of Public Comment

CEC alleges that the Board violated the Charter School Law in that the Board took formal action to revoke CEC's charter before the public had thirty days to provide comments to the Board. (*See CEC Compl. ¶¶ 9-13.*) On July 28, 1999, the Board adopted a Resolution revoking the charter granted to CEC. (*See Board Resolution at p.1 & CEC Compl. ¶ 10.*) This Resolution was adopted twenty-nine days after the public Revocation Hearing held before the Board and nearly two months after a legal notice was published in the Delaware County Times on May 29, 1999, regarding the upcoming Revocation Hearing. (*See School District Answer ¶ 12 & School District Hr'g (attached photocopy of notice).*) This notice of the Revocation Hearing satisfies the requirements of the Sunshine Law. Section 17-1729-A(c) states that formal action shall be taken after the public has had thirty (30) days to provide comments to the board. In the instant matter, the school district community was given more than thirty (30) days to comment on the pending revocation of CEC's charter in that legal notice was published in the Delaware County Times thirty (30) days before the hearing and nearly two months prior to the Resolution revoking the charter adopted by the Board. Moreover, the CAB finds that the relevant period for public comments regarding the revocation of CEC's charter was the thirty (30) days prior to the hearing and not the period that elapsed between the hearing and the Resolution. Thus, we do not believe that CEC was prejudiced by the Board's July 28, 1999, Resolution, even though it was adopted only twenty-nine (29) days after the revocation hearing.

b. Length of School Year

Next, the Petitioner asserts that the Board's Finding of Fact # 22¹⁰ was erroneous and not in accordance with the provisions of the Charter School Law. (*See N.T. of CAB*

¹⁰ Finding of Fact # 22 in the Board's July 28, 1999 Resolution revoking CEC's charter states:

In the area of the School Year, the team found that the Charter School would provide one hundred seventy-six (176) days

Hr'g at p. 107-108 & CEC Compl. ¶¶ 76-82.) Finding of Fact # 22 states that the failure to provide 180 days of instruction is contrary to the Charter School Law and the regulations of the State Board of Education contained in Chapter 11 of the Pennsylvania Code.¹¹ (See Board Resolution Finding of Fact at ¶ 22.) CEC alleges that it has complied with § 17-1715-A(9) by providing 990 hours of instruction at the elementary level. (See N.T. of CAB Hr'g at p. 108 & CEC Compl. ¶ 80.) Hence, CEC contends that Finding of Fact # 22 is legally erroneous.

Upon comparing the Charter School Law and other relevant provisions of the Public School Code of 1949, the CAB finds that the School District erred in its finding that failure to provide one hundred eighty (180) days of instruction violates the Charter School Law. Charter schools do not need the Secretary of Education's permission to deviate from the standard 180-day school year if they provide the proper number of hours of instruction. The Charter School Law provides that a charter school may provide either 180 days of instruction or 900 hours of instruction at the elementary level. *See* 24 P.S. § 17-1715-A(9). In addition, section 17-1732-A(a) of the Charter School Law exempts charters from § 1504 of the Public School Code, which sets forth the dates and times of school sessions.¹² Therefore, this matter is immaterial to the resolution of this appeal because the other findings of the School District are adequate to support revocation.

c. The School District's New Budget

In its Complaint, CEC asserts that the June 29, 1999 Revocation was merely a formality because the Board had decided the outcome of the CEC charter prior to the actual hearing. (See CEC Compl. ¶ 36.) CEC bases this contention on the fact that the

Footnote cont.:

of instruction [or] nine hundred ninety (990) hours of instruction. Without special exemption from the Secretary of education of the Commonwealth of Pennsylvania, this failure to provide one hundred eighty (180) days of instruction is contrary to the regulations of the State Board of Education, which are made applicable to Charter Schools by the Charter School Law.

See July 28, 1999 Board Resolution Finding of Fact at ¶ 22.

¹¹ The Widener Report stated and the Board found that CEC provided 176 days or 990 hours of instruction to students at the elementary level. (See Board Resolution Finding of Fact at ¶ 22 & Widener Report at p. 8.)

¹² Section 11.1 of Chapter 11 of 22 Pa. Code, which finds its legal basis in § 1504, requires all public schools to provide a minimum of 180 days of instruction for pupils unless otherwise permitted by the Secretary of Education to provide 900 hours of instruction at the elementary level. *See* 22 Pa. Code § 11.1 (relating to pupil attendance). However, this part of Chapter 11 cannot be applied to charter schools.

Board passed the School District's Annual Budget for the 1999-2000 fiscal year, which contained no funding for the Petitioner, approximately one hour after the conclusion of the Revocation Hearing. (*See* CEC Compl. ¶ 34.) CEC, however, offered no evidence to support this contention and thus, the CAB concludes that this allegation is mere conjecture and does not establish that the Board violated the Charter School Law.

C. **Motions to Supplement the Record**

Pursuant to the Charter School Law, the CAB shall review the record of a decision to renew or revoke a charter and at its discretion, the CAB may supplement the record *if* the information was previously unavailable. *See* 24 P.S. § 17-1729-A(d) (emphasis supplied). In addition to the certified record, the CAB may consider such other information as the charter school plan, annual reports, student performance and employee and community support for the charter school. *Id.*

1. **CEC's Motion to Supplement the Record**

On October 14, 1999, CEC filed a Motion to Supplement the Record with the CAB to augment the information previously supplied to the CAB regarding the revocation of CEC's charter. CEC seeks to supplement the record with information concerning:

1. Financial matters discussed at a meeting between the parties subsequent to the School District's revocation hearing of June 29, 1999;
2. Evidence asserting that School District officials failed to complain about possible health and safety risks to students and staff prior to the June 29, 1999, revocation hearing; and
3. Testimony from the revocation hearing of June 29, 1999, given by Shelley Beth Wepner and Vahan Gureghian, both affiliated with the Archway Charter School.

(*See* CEC Mot. to Supplement R. of 10-14-99 at ¶¶ 9, 14 and 17.) CEC asserts that the above-mentioned information was previously unavailable for the School District's consideration at the June 29, 1999, revocation hearing but that it should be taken into account by the CAB.

Upon reviewing the certified record, exhibits and other documents provided by the parties, the CAB concludes that the information CEC sought to add to the record was previously available and, in most respects, was already in the record. With respect to CEC's financial matters, including but not limited to the distribution and receipt of funding by the School District, this information can be found in the affidavits attached to CEC's petition for appeal. (*See* Exs. A & B of CEC Compl.) Second, as to the risk to the health and safety of students and staff, this information can be found in the Widener report, the hearing transcript and the Resolution issued by the Chester Upland Board of Control, all of which are included in the record. (*See* Widener Report at p.3; School

District Hr'g Resolution Finding of Fact at ¶ 12; and the Test. of Dr. Wilhite and A-H Muhammad in School District Hr'g Tr.) Third, the testimony of Shelley Beth Wepner and Vahan Gureghian is part of the hearing transcript provided to the CAB. (*See* School District Hr'g Tr. at pp. 59-74.) Because the information was previously available and is contained in the certified record, as indicated above, the CAB denies CEC's Motion to Supplement the Record.

2. The School District's Motion to Supplement the Record

On November 10, 1999, the School District also filed a Motion to Supplement the Record with the CAB. The School District seeks to have the complete minutes of the November 19, 1998 meeting of the Board of Control of the Chester Upland School District added to the certified record. (*See* School District Mot. to Supplement R. of 11-10-99 at ¶ 3.) Like the CEC Motion to Supplement the Record, the CAB denies the School District's Motion for the same reasons. The only relevant portion of the minutes of the meeting before the Board of Control is a paragraph that requires CEC to comply with the terms of the Charter, the School District's policy and a checklist for the operation of a charter school on or before December 17, 1998. (*See* School District Hr'g Ex. No. 3.) This information, however, was previously available and is part of the record already supplied to the CAB. (*See* School District Hr'g Tr. at 8:19; School District Hr'g Ex. No. 3; and Resolution Finding of Fact at ¶ 5.) Other than this one paragraph, the remaining information contained in the November 19, 1998 minutes of the Board of Control's meeting is irrelevant to this appeal and need not be considered by the CAB. Thus, the CAB denies the School District's Motion to Supplement the Record.

V. Conclusion

There is substantial evidence in the certified record to support the Findings of Fact made by the Board. For there reasons, the revocation of CEC's charter was properly conducted and in accordance with the Charter School Law. The decision of the Chester Upland School District is AFFIRMED.

ORDER

AND NOW, this _____ day of March, 2000, based upon the foregoing and the vote of this Board¹³, the July 28, 1999 decision of the Chester Upland School District revoking the charter of the Creative Educational Concepts Charter School is affirmed and the August 26, 1999 appeal of the Charter School is denied.

For the State Charter School Appeal Board,

Eugene W. Hickok
Chairman

¹³ At the Board's January 12, 2000 meeting, the appeal was denied by a vote of 7-0, with members Aliota, Bunn, Ford-Williams, Melnick, Reeves, Shipula and Hickok voting to deny the appeal.