

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION**

STATE CHARTER SCHOOL APPEAL BOARD

In Re: Einstein Academy Charter School :

**Appeal from revocation of charter by : Docket No. CAB 2002-6
the Morrisville Borough School District :**

OPINION AND ORDER

I. BACKGROUND

The Einstein Academy Charter School (“Einstein”) brings this appeal to challenge the decision of the Board of School Directors of Morrisville Borough School District (“Morrisville”) revoking its charter to operate a charter school. Einstein seeks to have the State Charter School Appeal Board (“CAB”) reverse the revocation of its charter, alleging that Morrisville’s factual findings and conclusions of law are either erroneous or insufficient to support the revocation decision. In addition, Einstein argues that Morrisville’s decision should be overturned because Einstein’s due process rights were allegedly violated in several respects and because of an alleged accord and satisfaction. Morrisville, in contrast, contends that Einstein’s due process and accord and satisfaction arguments lack legal or factual basis. Moreover, Morrisville asserts that the revocation of Einstein’s charter was appropriate because the charter school has not complied with the terms of its charter and with provisions of the Charter School Law (“CSL”).

On March 27, 2003, Morrisville and Einstein presented oral arguments to CAB regarding the revocation of Einstein’s charter. At that time, CAB also heard argument on a Motion to Supplement the Record, which had been filed by Einstein on January 13, 2003, and voted to deny that motion. On April 7, 2003, Morrisville filed supplemental proposed findings of fact and conclusions of law. Einstein filed its

supplemental findings and conclusions on April 9, 2003. CAB has reviewed the record herein, including the supplemental filings of the parties. Based upon its due consideration of the findings of Morrisville, as well as the arguments made on behalf of Einstein, for the reasons set forth herein, CAB upholds the revocation of Einstein's charter. CAB also rejects Einstein's arguments that it was denied due process of law during the proceedings below. Finally, CAB concludes that Morrisville was not precluded, by the principle of accord and satisfaction, from relying upon certain matters in support of the revocation decision.

II. FINDINGS OF FACT

The State Charter School Appeal Board finds the following:

1. On or about November 15, 2000, the National Organization for Children, d/b/a The E-Academy Charter School, a/k/a "T.E.A.C.H.", submitted a charter school application to the Morrisville's Board of School Directors.
2. Thereafter, the National Organization for Children changed the name of the charter school from The E-Academy Charter School a/k/a "T.E.A.C.H." to the Einstein Academy Charter School.
3. After holding public hearings and requesting public comment, Morrisville granted a charter and approved a written charter agreement with Einstein on March 20, 2001. The charter school agreement had an effective date of July 1, 2001. The application originally filed by T.E.A.C.H. on November 15, 2000 was incorporated into the charter school agreement as if it were fully set forth therein.
4. On or about March 28, 2002, Einstein, Morrisville and the Pennsylvania Department of Education ("Department") entered into a Settlement Agreement prompted by litigation filed against Einstein and Morrisville by the Department in Commonwealth Court.

5. On April 3, 2002, an amended charter school agreement was approved by Morrisville, which was subsequently approved by Einstein as well. This agreement incorporated provisions of the Settlement Agreement and other changes agreed to by Einstein and Morrisville.

6. On June 21, 2002, William F. Thomson Jr., the Solicitor for Morrisville, sent a letter to Einstein. This letter served as formal notice of Morrisville's intent to revoke the amended charter school agreement between Morrisville and Einstein. This letter set forth thirteen (13) reasons why Morrisville sought to revoke the charter. Exhibit M-1.

7. As a result of the June 21, 2002 notice, Morrisville began holding public hearings on the revocation of the charter on July 30, 2002. Hearings took place on approximately thirteen (13) different evenings, concluding on September 5, 2002. Morrisville heard closing argument from both attorneys on September 25, 2002.

A. Facts Pertaining to the Location of Einstein

8. The charter school agreement executed on March 20, 2001 required Einstein to locate its administrative office and at least ten (10) workstations within leased space in Morrisville. The amended charter school agreement required Einstein to lease approximately 3,000 square feet from Morrisville and pay Morrisville \$60,000 annually for that space, which was to house Einstein's administrative office and its "entire operation."

9. As of August 2001, Morrisville made space available to Einstein in the "metal shop" of Morrisville Middle-Senior High School and drew up specifications for the necessary renovations to make the space usable for Einstein's purposes.

10. Einstein was to cause all renovations to be completed to make the space suitable for its use. Although Einstein considered renovating and using the space at Morrisville Middle-Senior High School, it did not do so.

11. As of September 2001, Einstein's operations and administration were being conducted out of rented space in Manayunk, Philadelphia County.

12. Einstein's physical presence in Morrisville consisted only of several phone lines in the metal shop and the use of the district's address for the delivery of mail. Three or four desks and some computers were placed in the metal shop in November and December of 2001 and two Einstein employees occasionally worked at that space.

13. In January 2002, Morrisville's superintendent observed at least twenty-five (25) teachers working at established workstations at the Manayunk facility.

14. As of March 2002, only three (3) of thirty-six (36) Einstein employees reported to work on a daily basis in Morrisville.

15. Under the Settlement Agreement of March 2002, Einstein agreed to relocate its administrative offices and professional employees to Morrisville by May 20, 2002.

16. Einstein also agreed to move its entire operation into the space at Morrisville Middle-Senior High School under the amended charter school agreement of April 3, 2002.

17. After the Settlement Agreement and the amended charter school agreement were executed, Einstein entered into a month-to-month lease for a facility in King of Prussia, PA, which Einstein occupied from at least May 2002 through July 2002.

18. Einstein never set aside any portion of the approximately \$3.6 million it received from the Department to cover the costs of renovations to the "metal shop" or the "computer lab" at the Morrisville school building, nor did Einstein ever make even minimum improvements to that space.

19. Einstein's Chief Executive Officer has never had an office in Morrisville.

20. Einstein made no effort to move its entire staff and/or its entire operation to Morrisville.

B. Facts Pertaining to the Failure to Provide Special Education

21. Some of the students enrolled in Einstein were children with disabilities who needed special education and related services.

22. It was Einstein's responsibility to identify those students at the time of enrollment as children with disabilities or children thought to have disabilities.

23. Einstein was also responsible for sending "permission to evaluate" forms to the parents or guardians upon identifying those students.

24. It was also Einstein's responsibility to have appropriate personnel in order to provide and plan for the delivery of special education and related services to students with disabilities.

25. Einstein was aware of its responsibilities in this area.

26. Between May and October 2001, Einstein had the opportunity to take advantage of offers of special education assistance from Morrisville and special education compliance training sessions offered by the Department. Einstein's participation in that training was limited to one special education teacher who attended one session.

27. In October 2001, Einstein generated a list of approximately 284 students who might have been in need of special education services.

28. By January 2002, Einstein had not completed Individualized Education Programs (“IEPs”) for any of those potentially eligible students and was not at that time doing any evaluations. By February 2002, only two IEPs had been completed.

29. As of January 16, 2002, no employee at Einstein or its management company, Tutorbots, had a supervisory certificate in special education.

30. At a meeting with Morrisville on January 17, 2002, Einstein assured Morrisville that it would be hiring a Director of Special Education, a school psychologist, and additional special education teachers the following week.

31. None of the above-mentioned promised special education staff was hired within that time frame.

32. Einstein did appoint a Special Education Coordinator, but that individual does not hold supervisory certification in special education from the Department and was not be qualified to be a special education supervisor in a public school, including Einstein.

33. In the Settlement Agreement of March 2002, Einstein agreed to develop IEPs for at least half of the students identified in October 2001 as requiring special education or related services, within thirty (30) days of that agreement. Einstein also promised to develop IEPs for the remaining students within an additional fifteen (15) days. Thus, Einstein was required to complete one hundred eleven (111) IEPs by mid-May 2002.

34. By mid-May 2002, twenty-one (21) special education student files, or 19% of the number required under the Settlement Agreement, were provided to

Department monitors. Of those 21, only seven (7), or 6%, were found to demonstrate full compliance with the law.

35. By September 2002, only seventy-three (73) IEP meetings had been completed.

36. By the summer of 2002, Einstein had over \$2 million available in an escrow account specifically set aside for the delivery of special education services to students.

37. Einstein admits that it failed to comply with the terms of the Settlement Agreement regarding special education.

C. Facts Pertaining to the Failure to Meet Generally Accepted Standards of Fiscal Management

38. Beginning in the summer of 2001, before Einstein opened, Morrisville officials urged Einstein to hire a Business Manager who had experience with school business and financial affairs.

39. Einstein did not hire a Business Manager until the spring of 2002.

40. Beginning in September of 2001, Morrisville officials raised with Einstein Morrisville's concerns regarding the relationship between Einstein and Einstein's management company, Tutorbots.

41. Tutorbots lacked staff with experience in the business operations of a public school district.

42. One of Tutorbots' principals reviewed Tutorbots' own invoices and approved payment to Tutorbots as part of Tutorbots' management responsibilities for Einstein.

43. The contract between Tutorbots and Einstein provided for a payment of \$342,000 for services.

44. Einstein presented a budget to Morrisville that showed projected payments to Tutorbots in excess of \$7 million for services rendered.

45. At a meeting with Einstein in January 2002, Morrisville officials questioned Einstein's commitment to renovate Morrisville facilities. In response, Einstein assured Morrisville that Einstein had approximately \$825,000 available in its account for those renovations.

46. At the January 2002 meeting, one of Einstein's charter school founders asserted that Einstein was "her school" and that she could do whatever she wanted regardless of what Morrisville told her to do.

47. Morrisville officials later learned that Einstein had paid \$800,000 from its account to Tutorbots either immediately preceding or immediately after the January 2002 meeting.

48. The \$800,000 payment to Tutorbots eventually led to a negative balance in Einstein's general operating account that resulted in Einstein having to borrow money from Tutorbots to pay for its normal operating expenses.

49. When it learned of Einstein's borrowing from Tutorbots, Morrisville requested that Tutorbots provide Morrisville with documentation of Einstein's financial condition.

50. Tutorbots did not provide Morrisville with the requested documentation.

51. Morrisville officials determined that as of February 19, 2002, Einstein had paid Tutorbots approximately \$2.2 million.

52. In a letter to Einstein, Morrisville's superintendent asserted that he did not believe Einstein had received \$2.2 million in services from Tutorbots and that

"any reasonable manager" would have refused to pay Tutorbots' invoices or would have insisted on a more inexpensive delivery system.

53. Morrisville's concerns regarding Einstein's fiscal management were incorporated into the Settlement Agreement of March 2002.

54. Under the Settlement Agreement, Einstein agreed to submit all paid and outstanding invoices from Tutorbots to a forensic accounting firm, which was to conduct a comprehensive audit of the invoices previously submitted to Einstein to determine whether they were reasonable for the services provided, if funds were used for purposes permitted by law, and whether Einstein had properly paid.

55. The firm of Nihill & Riedley ("N&R") was hired to conduct the forensic audit.

56. According to N&R's audit report, Tutorbot's fee schedule was 42% to 73% higher than the prices of comparable vendors, which resulted in an overpayment by Einstein to Tutorbots of an amount between \$746,469 and \$1,653,799.

57. Einstein's budget for the 2001-02 school year indicated that Einstein would have paid Tutorbots \$7.4 million, or 45-50% of Einstein's budget.

58. N&R considered a payment to be "proper" only if it was supported by an authorized purchase order, an invoice and a canceled check.

59. During its forensic audit, N&R found that documents were missing.

60. Disbursements made by Einstein were not supported by purchase orders, signed contracts, retainer letters, invoices, packing slips, receiving reports, delivery reports or final approval of the Board that ratified, confirmed or affirmed the disbursement.

61. Of 647 checks that had been paid and which were audited, only 87 were supported by invoices and only 26 were supported by purchase orders, 12 of which purchase orders had not been signed by Einstein.

62. N&R also reviewed records of a March 2002 meeting of Einstein's Board of Trustees, at which the Board affirmed prior disbursements. While the minutes of that meeting contained references to bills being attached to agendas, there were no agendas and no attached bills.

63. N&R also found that none of Einstein's payments to Tutorbots, which totaled approximately \$2.5 million, had contemporaneous Board approval.

64. Pursuant to paragraph 12 of the Settlement Agreement, Morrisville hired an independent comptroller to review all invoices submitted to Einstein for payment.

65. Under the Settlement Agreement, Einstein was forbidden from paying any invoice for which the independent comptroller, using a reasonableness standard, questioned the propriety or necessity of making payment, until those audit questions were resolved.

66. Several types of bills/invoices were labeled as "priority" in the Settlement Agreement, including the payment of "back wages and benefits" to professional employees; payment to any Internet service provider; and payments to any vendor, except Tutorbots, whose continuing services were essential to the daily operation of Einstein.

67. Einstein disregarded the advice of the independent comptroller and paid invoices over his objections.

68. On April 15, 2002, the Einstein Board of Trustees approved payment of overtime pay/bonuses to the school's teachers, despite knowing that Morrisville and the comptroller opposed such payment.

69. There is no evidence in the personnel or payroll files to substantiate a claim for overtime pay for any Einstein employee.

70. In May 2002, Einstein paid approximately \$120,000 in bonuses to Einstein employees.

71. Morrisville and the independent comptroller first learned of the bonuses from the press.

72. Einstein purchased and received approximately 2,550 computers and monitors from Compaq to provide to its students.

73. After matching students with computers and taking a physical inventory, the independent comptroller concluded that 1,100 computers and monitors, worth approximately \$1 million, were unaccounted for.

74. Einstein informed the comptroller that Einstein did not have a record-keeping system for the computers.

75. Einstein officials told the comptroller that although they did not know how many computers and monitors were in the hands of disenrolled students, the number of such computers, which Einstein made no attempt to recover, might have been more than 500.

76. N&R confirmed that Einstein could not account for many of its computers and monitors.

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 (“CSL”), 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 CSL 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, 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, 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 CSL permits a charter to remain in effect until final disposition of the charter school’s appeal of the revocation by CAB. *See* 24 P.S. §17-1729-A(f).
6. In revoking a charter, the local school district shall afford basic due process rights to the charter school. *See* 24 P.S. §17-1729-A(c).
7. Once a charter is granted, the charter school is required to comply with its terms, and violation of the material terms of the charter is a proper basis for revocation. *See* 24 P.S. § 17-1729-A(a)(1).
8. 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).

9. A charter school is required to comply with Federal laws and regulations regarding children with disabilities and also specifically with the standards for compliance that have been promulgated at Chapter 711 of Title 22 of the Pennsylvania Code. *See* 24 P.S. §17-1732-A(c) and 22 Pa. Code §711.1 *et. seq.* Failure to meet these laws and regulations is a proper basis for revocation of the charter. 24 P.S. §17-1729-A(a)(5).

10. Giving due consideration to the findings of the Board, CAB concludes that the revocation of Einstein's charter was proper and in accordance with the bases set forth in §17-1729-A(a)(1)-(6) of the CSL.

IV. DISCUSSION

The Pennsylvania General Assembly enacted the CSL to provide school children with additional opportunities to attend public schools that offer diverse and innovative educational techniques, operating independent of the traditional public school system. The CSL, 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 or the CSL or has violated other laws. *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 CSL 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.¹

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.²

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).

Morrisville revoked Einstein's charter for numerous reasons, which generally can be classified as falling within paragraphs (1), (3), (4) and (5) of the above-listed reasons for revocation. However, before addressing those grounds, CAB will address the general procedural issues raised in Einstein's appeal.

A. Accord and Satisfaction

Initially, Einstein argues that Morrisville is barred by the doctrine of accord and satisfaction from relying upon any events and conditions that allegedly existed before the March 2002 execution of a Settlement Agreement in Commonwealth, Department of Education v. Einstein Academy, et. al. (No. 51 M.D. 2002)³

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

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

³ This case was a declaratory judgment action in which the Department asked the court to determine whether the Department was obligated to continue making payments to Einstein pursuant to the CSL or

("Settlement Agreement"), in support of its revocation decision. If CAB cannot rely upon the facts relating to these prior events and conditions, Einstein argues that the record lacks substantial evidence to support Morrisville's decision and that the revocation should be overturned. CAB disagrees.

In order to prevail on a claim of "accord and satisfaction," and thereby extinguish all claims arising from its original obligations, Einstein must prove by a preponderance of the evidence that it has satisfied its burden. Its burden is to show that the performance or payment that it offered under the Settlement Agreement and the amended charter agreements with Morrisville and the Department were accepted, in an unequivocal mutual understanding and "meeting of the minds" among the parties, as full and complete satisfaction of Einstein's obligations. *See, e.g., Kripp v. Kripp*, 784 A.2d 158 (Pa. Super. 2001). Einstein can meet this burden only if there is clear language in the Settlement Agreement that indicates such an unequivocal understanding among all the interested parties. *See, e.g., Standard Pennsylvania Practice Manual* §27:13 (West 2001); *see also Bernstein v. Hirsch*, 33 Pa. Super. 87 (1907). If the amended charter and the settlement, however, constitute an "accord executory," which the parties did not intend as a substitute contract, Einstein's original obligations are not extinguished and claims for breach of contract may be brought on those obligations. *See Beechwood Commons Condominiums Ass'n v. Beechwood Commons Associates, Ltd.*, 397 Pa. Super. 217 (1990).

In this case, it is clear that the Settlement Agreement in the litigation was just that – a settlement to end the litigation. *See Borough of Morrisville's Proposed*

whether it could discontinue payments because of apparent violations of law by Einstein and the Secretary's obligation to protect public funds. The parties entered into a Settlement Agreement on March 28, 2002, which ended the litigation. Under the Settlement Agreement, Einstein agreed to take certain actions and, in return, the Department agreed that payments would resume.

Findings of Fact 19-22. Neither the litigation nor the settlement directly concerned the potential revocation of Einstein's charter. Thus, even if Einstein had met all the conditions of the Settlement Agreement, that would not have extinguished Morrisville's right to proceed with revocation proceedings against Einstein for actions or conditions that predated the settlement. In fact, the parties recited that the Settlement Agreement was for the specific purpose of resolving and compromising their claims and differences "with respect to the Action" – the litigation. Exhibit M-4, p.1.⁴ Thus, CAB finds not only that Einstein has failed to prove accord and satisfaction but also, in fact and in law, that the prerequisites to application of this legal theory are absent in this appeal.⁵

B. Due Process⁶

1. Commingling of prosecutorial and adjudicative functions.

Einstein first asserts that Morrisville's solicitor, William Thomson, assisted in the development and prosecution of the charter revocation charges and also presided over the proceedings, "making rules on evidentiary and other legal issues," assisted Morrisville in its deliberations, and authored Morrisville's written opinion. ("Notice of Intention to Appeal," ¶ 1.) According to Einstein, the combination of Mr. Thompson's actions as prosecutor and adjudicator in this case constituted an unconstitutional

⁴ Exhibits designated by the letter "M" are exhibits introduced on behalf of Morrisville at the Einstein revocation hearing and are included in the certified record before CAB. Einstein exhibits will be designated "E".

⁵ For similar reasons, the CAB rejects Einstein's assertions that Morrisville waived its objections to any violations preceding the entry of the Settlement Agreement or that Morrisville is estopped from revoking Einstein's charter. But for Einstein's assertions, the record is devoid of any evidence to support a claim of waiver. Estoppel does not lie because the litigation that was settled was not about potential charter revocation and so reliance upon settlement as a bar to revocation would be unreasonable.

⁶ On January 13, 2003, Einstein had filed with CAB a Motion to Supplement the Record. This motion sought to reopen the record for taking of testimony regarding Einstein's alleged due process violations. That motion was argued before CAB at its meeting of March 27, 2003 and was denied by a vote of 5-0. Ms. Salinger was absent and Ms. Reeves did not vote.

commingling that deprived Einstein of due process in the revocation proceedings below.

Under the Federal Constitution, procedural due process requires that in a dispute with the government in which a private party's property rights are at stake, the individual must, at a minimum, be afforded an opportunity to be heard before a fair and impartial adjudicator. U.S. CONST., amend. XIV. Pennsylvania's due process rights, however, are more expansive, in that "unlike the Fourteenth Amendment, a violation of due process occurs, even if no prejudice is shown, when the same entity or individual participates in both the prosecutorial and adjudicatory aspects of the proceeding." *Stone & Edwards v. Dept. of Insurance*, 636 A.2d 293, 297 (Pa. Cmwlth. 1994). See also Pennsylvania Constitution, Art. I, §§1, 9, and 11. The Pennsylvania Supreme Court has held that "[g]overnment bodies charged with decision-making functions must avoid the appearance of possible prejudice, be it from its members or from those who advise it or represent parties before it." *Horn v. Twp. of Hilltown*, 337 A.2d 858, 860 (Pa. 1975).

Contrary to Einstein's assertions that Mr. Thomson's role in the charter revocation proceedings improperly mixed prosecutorial and adjudicative functions, Morrisville's Answer ("Answer") to Einstein's Motion to Supplement the Record indicates that, for purposes of prosecution, Morrisville retained separate counsel. (Answer at ¶ 10.) Morrisville also indicates that although Mr. Thomson was subpoenaed and was present on each occasion that testimony was taken at the revocation hearing, Einstein never called on him to testify. (Answer at ¶ 10). CAB has reviewed the

certified record, and particularly the hearing transcripts, which support the assertions of the Answer. Thus, on this basis, CAB concludes that improper commingling did not occur and that due process was afforded to Einstein.

2. "Undue and improper influence"

Einstein also asserts separate violations of due process, in that it alleges that Morrisville's Board was subject to "undue and improper influence" from then Secretary of Education Zogby and "other personnel" of PDE, and from, *inter alia*, representatives of other public school districts "currently in litigation with Einstein." ("Notice of Intention to Appeal," ¶¶ 2 and 4.)

"Undue influence" is a defense most frequently asserted to void wills or contracts. "Undue influence" usually involves the unfair use of a relationship of trust to pressure a party into an unfavorable agreement that the party would not have made but for such pressure. Cases of contractual or testamentary undue influence generally involve one party who is somehow at a disadvantage, due, perhaps, to illness, age, or emotional vulnerability, and another party who has a duty towards that person. *See, e.g., In re Angle*, 777 A.2d 114 (Pa. Super. 2001); *Chalkey v. Roush*, 757 A.2d 972 (Pa. Super. 2000).

"Improper influence" is a term often used in Pennsylvania law to refer to conflicts of interest of judges or other adjudicators, or in reference to bribes or other contacts with judges, jurors or witnesses intended to sway decisions, votes or testimony. *See, e.g.,* 65 Pa. C.S. §1103 (prohibiting public officials

from accepting gifts of money); 18 Pa. C.S. §4702 (criminalizing threats or "improper influence" in official and political matters). The terms "undue" or "improper" influence are also occasionally used by Pennsylvania courts in due process cases as synonyms for the appearance of impropriety that arises from commingling of prosecutorial and adjudicatory functions. *See, e.g., Curran v. Dept. of State*, 766 A.2d 907 (Pa. Cmwlth. 2001). If this is Einstein's contention, then it fails for the same reasons as set forth in the prior section of this opinion concerning commingling. In addition, CAB finds no basis for the claim that undue or improper influence was exerted, since the former Secretary played no role in the proceeding before the Board of School Directors.

The former Secretary was subpoenaed to appear at the revocation hearing, and his counsel objected to his appearance. Einstein was afforded the opportunity to file an Offer of Proof in response to the objection, but failed to do so. It is a well-established principle of administrative law that for a question to be raised on appeal, it must be preserved below. Since Einstein failed to pursue its subpoena at the hearing by making an Offer of Proof, CAB finds that it has waived the right to now assert this as a separate violation of due process. Moreover, even if CAB were inclined to consider Einstein's plea, other than noting that Mr. Zogby "has now taken a position with another Pennsylvania cyber charter school that competes with Einstein," Einstein still fails to describe the import or purported substance of influence the former Secretary is believed to have had.

Moreover, if Einstein intends another meaning of the terms "undue" and "improper" influence in the context of Morrisville's revocation decision,

it provides no guidance as to how those terms are to be interpreted and alleges no facts upon which it bases those claims. For all of these reasons, CAB finds Einstein's claim of undue and improper influence to be without merit and rejects it.

C. Propriety of the Revocation

The primary issue in this appeal is whether the November 13, 2002 Order revoking Einstein's charter was appropriate and in accordance with the provisions of the CSL. 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 CSL also states that the charter shall remain in effect until final disposition by the appeal board. *See* 24 P.S. §17-1729-A(f). Pursuant to the CSL, CAB shall review the record of a decision to not renew or to revoke a charter and at its discretion, 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, 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.* CAB will discuss Morrisville's bases for revocation below.

1. Charter School Location

Pursuant to the CSL, a charter school must be located in the district to which it has applied and that ultimately grants its charter. *See*, 24 P.S. §§17-1703-A, 17-1717-A(c), 17-1723(a). Here, Einstein applied to and was granted a charter by Morrisville. Thus, Einstein should have been located within Morrisville's boundaries. From the time that Einstein commenced operations, however, its location was an issue.

Although Einstein officials were considering renovating and using space in Morrisville, they failed to do so. At the beginning of Einstein's initial year of operation, in September 2001, its only physical presence in Morrisville consisted of several telephone lines in the "metal shop" and the use of Morrisville's address for the delivery of mail. The actual charter school operation and administration was conducted in rented space in Manayunk, Philadelphia County. For a brief time, from November to December 2001, three or four desks and some computers were placed in the metal shop and two Einstein staff occasionally worked in Morrisville. Notwithstanding repeated requests from Morrisville administrators that the charter school relocate, the superintendent observed at least twenty-five Einstein teachers working at established workstations in the Manayunk facility in January 2002. Subsequently, in March, three of the thirty-six Einstein employees began reporting to work in Morrisville on a daily basis. This still does not satisfy the requirement of the CSL, since the bulk of its employees were not in Morrisville.

Pursuant to the Settlement Agreement, entered into in March 2002, Einstein agreed and was required to relocate its administrative offices and professional employees to Morrisville by May 20, 2002. Exhibit M-4, p. 10. Einstein failed to do so. In fact, Einstein's Chief Executive Officer never had an office in Morrisville. Thus, notwithstanding other arguments made about temporary relocations and incomplete renovations to space within Morrisville⁷, the fact remains that Einstein was not located within Morrisville

⁷ Einstein contends that it relied upon representations of the superintendent that allegedly supported its temporary relocation of staff from Manayunk to King of Prussia (also not within Morrisville's boundaries)

during the 2001-2002 school year. Even if CAB were to ignore what occurred prior to the Settlement Agreement, that agreement specifically required the relocation to occur. It did not and so Einstein was at the time of the initiation of the revocation proceedings in violation of its charter, as amended, the Settlement Agreement and the CSL.

For the above reasons, CAB adopts the findings set forth in Part II of this Opinion. CAB also specifically concludes that failure to locate in the chartering district constitutes a sufficient ground for charter revocation under the CSL.

2. Failure to Provide Special Education

Charter Schools are required to “ensure that a FAPE [free appropriate public education] is available to a child with a disability in compliance with the IDEA [Individuals with Disabilities Education Act] and its implementing regulations...” 22 Pa. Code §711.3(a). In order to satisfy this responsibility, a charter school must identify students with disabilities (through a process known as “child find”), evaluate them, develop individualized education programs (IEPs) and provide academic instruction and related services in accordance with the IEPs.

The parties agree that some of the students enrolled in Einstein were children with disabilities who needed special education and related services.

N.T 8/22/2002 at 16-18. Those students should have been identified by

and delayed making the planned and promised renovations to Morrisville space. Thus, it argues that Morrisville is estopped from using the location issue as grounds for revocation. CAB disagrees because the CSL, the charter, the amended charter and the Settlement Agreement all unequivocally require the charter school to be located in Morrisville. In light of this documentary record and the entreaties of both Morrisville and the Department, Einstein’s purported reliance upon oral representations of the Superintendent is conveniently self-serving and is discounted.

Einstein as children with disabilities or thought to have disabilities at the time of enrollment. In addition, Einstein should have had on staff appropriately certified personnel to plan and provide for the delivery of special education and related services to students with disabilities. Because Einstein recognized that it had responsibility in this area, particularly for child find, it generated a list of approximately 284 students who might be in need of special education services in October 2001. Notwithstanding offers of assistance from Morrisville⁸ and meetings between the parties about this subject, by January 2002, Einstein had not completed IEPs for any of these 284 potentially eligible students. In fact, it was not until February of 2002 that the first **two** IEPs were completed. N.T 8/22/2002 at 71.

Another issue raised at the revocation hearing concerned appropriate staffing to serve students with disabilities. As of January 16, 2002, when Morrisville representatives met with representatives of Einstein, no employee at Einstein or its management company, Tutorbots, had a supervisory certificate in special education. During that meeting, Morrisville was assured that Einstein would be hiring a Director of Special Education, a school psychologist and additional special education teachers the following week. However, none of these staff was hired as promised. Several weeks later, Einstein appointed Catherine Greenstein as its Special Education Coordinator. However, Ms. Greenstein does not hold supervisory certification in special

⁸In May 2001, all charter schools, including Einstein, were advised of training sessions on general compliance with special education regulations and standards to be offered by the Department in September and October 2001. Einstein's participation was limited to one special education teacher who attended one training session.

education from the Department. She was not qualified to be the supervisor of special education in a public school, including Einstein.

Einstein argues that the certification status of Ms. Greenstein was not included in Morrisville's revocation notice and that neither Morrisville nor CAB should consider this in the revocation proceedings. In addition, Einstein contends that the CSL does not require Ms. Greenstein to be certificated as a special education supervisor. These arguments wholly misconstrue the import of Ms. Greenstein's employment to this proceeding, and demonstrate Einstein's lack of knowledge about special education regulations. See, 22 Pa. Code §711.5. The first ground for revocation listed in the revocation notice was special education. *Notice of Revocation*, p.2. According to Morrisville, one of the reasons why Einstein was deficient in meeting its special education responsibilities was because of lack of knowledgeable staff. Once Einstein agreed to hire appropriate staff, however, one of its initial hires was Ms. Greenstein. She was not certificated as a supervisor of special education, but she supervised special education teachers. Thus, her lack of certification is a proper and relevant finding related to the issue of whether Einstein was providing special education to its students. Therefore, CAB concludes that Ms. Greenstein's hiring does not satisfy Einstein's promise, and special education regulations, to secure properly certificated staff for its special education program.

Subsequently, the Settlement Agreement entered into among Einstein, Morrisville and the Department also included provisions regarding Einstein's

special education responsibilities.⁹ In the Settlement Agreement, Einstein agreed that, within 30 days of execution, it would develop IEPs for at least one-half of the students identified as students with disabilities who were in need of special education, including related services, and obtain parents' signatures indicating agreement or disagreement. Einstein also promised that the remaining students would have IEPs within an additional 15 days. During a review conducted in May 2002, Einstein admitted and the Department found that Einstein had failed to comply with the terms of the Settlement Agreement regarding special education. N.T. 8/22/2002 at 74; N.T. 9/5/2002 at 41.

Einstein, on appeal, contends that “any alleged failure on Einstein’s part to comply with IDEA [which would include the development of IEPs for its approximately 284 students] ... was not material and was in any event excused under the circumstances because it was due to factors beyond Einstein’s control.” *Einstein’s Notice of Intention to Appeal* at 3. However, Einstein agreed to the terms and conditions of the Settlement Agreement and the time limitations imposed therein. At no time before or after the Settlement Agreement was executed did anyone from Einstein advise any party that it believed the time limitations to which it had agreed were unreasonable or impossible to meet. Only at the revocation hearing and now, before CAB, does Einstein make this assertion.

⁹In the time between the January meeting and the initiation of litigation, the Department’s Bureau of Special Education conducted several visits to Einstein to monitor its activities and the results of those visits confirmed the special education violations that had also been found by Morrisville. *See*, Exhibit M-7, N.T. 7/30/2002 at 49-51.

Giving Einstein the benefit of the doubt, CAB assumes that the Settlement Agreement required Einstein to complete 111¹⁰ IEPs by mid-May 2002. The record establishes that, by September 2002, only 73 IEP meetings had been completed. N.T. 9/05/2002 at 60. Thus, Einstein appears to suggest, and asks CAB to conclude, that it is an immaterial violation of the federal special education law if 35% of a school's students who have been identified as having a disability and needing special education have no IEP (notwithstanding that some of those students may have already been enrolled in Einstein for a full school year without appropriate education or related services).

In point of fact, by mid-May, only 21 student files were provided to Department monitors and of those, only 7 were found to be complete so as to demonstrate full compliance with law. Thus, at the point when Einstein agreed it would be in full compliance with its legal obligations to students with disabilities, it had at best addressed the needs of 6% of its eligible population (7 of 111 students). Even had the parties agreed to extend the settlement time period for compliance with special education laws and regulations, the fact remains that by the end of the 2001-02 school year (June 30, 2002), Einstein had failed to comply with the special education laws and regulations, and had failed to provide related services to many students who were entitled by law to have those services. Moreover, this failure continued despite the fact that Einstein, by the summer of 2002, had over \$2 million

¹⁰ Although Einstein originally estimated an enrollment of 284 special needs students, by the time of the litigation, Einstein had revised that number downward to 111, whereas the Bureau of Special Education suggested that the number was 166.

available to it in an escrow account specifically set aside for the delivery of special education services to students.

Based on the foregoing discussion, CAB concurs with the findings of Morrisville that Einstein has failed in most respects to meet its special education obligations to students with disabilities. Moreover, CAB finds that this failure constitutes not only a violation of the Settlement Agreement, but of the CSL, the IDEA and Chapter 711 of 22 Pa. Code, from which Einstein has not been exempted. Thus Einstein's failure to satisfy these legal obligations constitutes an adequate basis for revocation of Einstein's charter.

3. Generally Accepted Standards of Fiscal Management

Morrisville also found several practices or actions by Einstein to be contrary to generally accepted standards of fiscal management. Because some of these issues had existed for some time and had not been corrected, and because some actions were taken in clear contravention of the express directions from Morrisville, these matters were relied upon as a ground for revocation of the charter.

The first fiscal matter of concern for Morrisville was Einstein's lack of a business manager. Although Morrisville urged Einstein to employ such an individual, it refused to do so. Beginning in the summer of 2001, even before Einstein opened, Morrisville officials told Einstein to hire a business manager. This was based upon the superintendent's belief that Einstein and Tutorbots'¹¹ officials and employees did not understand basic school accounting, the child accounting process and maintenance of records so that

¹¹Tutorbots was a company with which Einstein had contracted for business administration services. This company was owned by the founders of Einstein.

accurate information would be provided to the Department. In September 2001, the superintendent wrote to Einstein and urged the school to hire a business manager who had experience with school business affairs.

However, it was not until the spring of 2002 that Einstein finally employed a business manager.

Einstein correctly contends that employment of a business manager is not required under the CSL, nor was it included in the school's charter.

However, the issue here is not whether the school had a business manager, but whether it had anyone employed or contracted who could advise and assist the Board of Trustees in prudently exercising their fiduciary duty to manage the public funds provided to the school. It is in this latter regard that Einstein failed, CAB concludes, to use generally accepted standards of fiscal management. Instead, Einstein stumbled along until the spring of its initial year of operation before it obtained competent financial assistance.

Another financial concern was the relationship between Einstein and Tutorbots. Tutorbots lacked staff with experience in the business operations of a public school district, notwithstanding the business administration functions it performed for Einstein. In fact, one of the principals of Tutorbots reviewed Tutorbots' own invoices and approved payment to Tutorbots as part of Tutorbots' management services to Einstein. Based upon information such as this, Morrisville met with Einstein in January 2002 to express concern over Tutorbots' relationship with Einstein. Morrisville compared the contract between Tutorbots and Einstein, which provided for a payment of \$342,000 for services, with the budget later provided to Morrisville, which showed projected payments to Tutorbots in excess of \$7 million for services rendered.

When confronted with this information, one of the charter school founders asserted that Einstein was her school and that she could do what she wanted regardless of what Morrisville told her to do. Such a statement is, CAB finds, in clear contravention of the CSL and of the fiduciary responsibilities placed upon the Board of Trustees of Einstein as public officials. 24 P.S. §17-1715-A(11). Nonetheless, Einstein contends that these purported overpayments are immaterial because it can obtain credit or reimbursement from Tutorbots for substantiated excesses. However, Einstein's position is undermined by the fact that there is no evidence of record in these proceedings nor even an assertion in the pleadings before CAB, that any positive steps to determine and recoup overpayments are being or will be made. Because there is no such support for Einstein's argument, CAB adopts the findings of Morrisville.

At the January 2002 meeting between Morrisville and Einstein, Morrisville also questioned a previous commitment made by Einstein to renovate Morrisville facilities. In response, Einstein officials assured Morrisville that Einstein had approximately \$825,000 in its account, which funds were available for these renovations. Shortly after the meeting, however, Morrisville officials learned that Einstein had paid \$800,000 to Tutorbots around the time of the meeting. This payment to Tutorbots eventually led to a negative balance in Einstein's general operating account and resulted in Einstein having to borrow money from Tutorbots to pay for its normal operating expenses.

Because Morrisville learned of Einstein's borrowing, it requested documentation of Einstein's financial condition from Tutorbots' representatives on numerous occasions, but this information was never

provided. Nonetheless, Morrisville determined that as of February 19, 2002, Tutorbots had been paid approximately \$2.2 million by Einstein. Thus, on March 1, 2002, the Superintendent wrote Einstein asserting that he did not believe that Tutorbots had rendered \$2.2 million worth of service to Einstein and that any reasonable manager would have refused to pay their invoices or would have insisted on a more inexpensive delivery system.

As a result of the fiscal management concerns of Morrisville, certain provisions were included in the Settlement Agreement entered into in March 2002. Under one of these provisions, Einstein agreed to submit all paid and outstanding invoices from Tutorbots to a forensic accounting firm, which would conduct a comprehensive audit of the invoices previously submitted to Einstein by Tutorbots to determine if they were properly paid, reasonable for the services provided, and if the funds were used for purposes permitted under the Public School Code of 1949. Exhibit M-4, p. 7.

The firm of N&R was hired to conduct the forensic audit. According to N&R's report, Tutorbots' fee schedule was at least 42% to 73% higher than the prices of comparable vendors, which resulted in an overpayment by Einstein to Tutorbots in an amount between \$746,469 and \$1,653,799. For example, Einstein's budget for the 2001-02 school year indicated that the amount of money to be paid to Tutorbots would have been \$7.4 million, or 45-50% of Einstein's budget.

When N&R began the audit, they found that documents were missing. Disbursements made by Einstein were not supported by purchase orders, signed contracts, retainer letters, invoices, packing slips, receiving reports, delivery reports or final approval by the Board of Trustees that ratified,

confirmed or affirmed the disbursement. The auditors considered a payment to be proper only if it was supported by three documents: an authorized purchase order, an invoice and a canceled check. Of 647 checks that had been paid and which were audited, only 87 were supported by invoices and only 26 were supported with purchase orders, except that 12 of these purchase orders were not signed by Einstein. N&R also reviewed records of a March 12, 2002 meeting of Einstein's Board of Trustees, at which meeting the Board affirmed prior disbursements. Although the minutes of the March 12, 2002 meeting contained references to specific bills being attached to the agendas, there were no agendas and the bills were not attached to the minutes. More significantly, N&R found that none of Einstein's payments to Tutorbots, totaling approximately \$2.5 million had contemporaneous Board approval.¹²

Pursuant to another provision of the Settlement Agreement, Morrisville was authorized to hire an independent comptroller to review all invoices submitted to Einstein for payment. The Settlement Agreement forbade Einstein from paying any invoice questioned by the independent comptroller until the audit questions were resolved. Several types of bills/invoices were labeled as priority in the Settlement Agreement, including the payment of "back wages and benefits" to professional employees; payment to any Internet service provider; and payments to any vendor, except Tutorbots, whose continuing services are essential to the daily operation of Einstein. The independent comptroller reviewed all invoices to determine the necessity or propriety of making payment and in his review used a

¹²In fact, N&R found that, although Tutorbots was charging Einstein for the development and posting of curriculum on Einstein's website, the teachers employed by Einstein were actually developing and posting almost all of the curriculum.

reasonableness standard as to whether to approve or disapprove an expenditure.

Einstein has disregarded the independent comptroller's advice and paid invoices over his objections. The first of these invoices was for employee overtime. After the settlement, a payroll calculation was made to insure that teachers would be paid the ten (10) weeks of pay that had not been paid by Einstein. In preparing for this calculation, no evidence was found in the personnel files or the payroll files that would have substantiated a claim for overtime by any employee. In addition, Morrisville and the comptroller made clear to Einstein that they opposed the payment of bonuses to Einstein employees. Nonetheless, Einstein wanted to pay its teachers bonuses because they had not been paid at various times during the year. Thus, at a meeting on April 15, 2002, the Einstein Board of Trustees apparently approved payment of overtime pay/bonuses to the school's teachers.¹³ Subsequently, Morrisville and Einstein met and agreed that the independent comptroller would oversee any changes to payroll, including the payment of bonuses and that the bonuses were not going to be paid.¹⁴ Later in May 2002 however, approximately \$120,000 in bonuses were paid to Einstein employees without the comptroller's approval. Both Morrisville and the comptroller first learned about these bonus payments from the press. CAB notes that this proceeding does not concern enforcement of the Settlement Agreement. However, CAB

¹³Interestingly, the original minutes of the April 15, 2002 meeting provided to Morrisville do not authorize or reflect the payment or the authorization of payment of bonuses/overtime pay to any Einstein teacher. A revised version of the minutes, provided to the independent comptroller and the District **over one month after the meeting**, contained a notation regarding the Board's decision to pay bonuses in lieu of overtime. No documentation has ever been produced or located to establish that employees worked overtime.

¹⁴Similarly, Einstein made a \$57,000 severance payment to an at-will administrative employee over the objection of and absent approval from the independent comptroller.

finds that the above instances of action contrary to the Settlement Agreement, but more importantly contrary to direction provided by Morrisville regarding several expenditures, is further corroboration of Einstein's shirking of its fiduciary duty.¹⁵

The last fiscal mismanagement issue concerns inadequate equipment controls and record keeping. Einstein purchased and received approximately 2,550 computers and monitors from Compaq to provide to its students. The independent auditor conducted an investigation in regard to an outstanding Compaq bill. After matching students with computers and taking a physical inventory, the comptroller concluded that approximately 1,100 computers were missing. This means that Einstein is unable to account for approximately \$1 million worth of computers and monitors. During the course of his investigation, the comptroller was informed that Einstein did not have a record-keeping system for the computers. In addition, Einstein did not know how many computers and monitors were in storage or in the hands of disenrolled students. An Einstein official suggested that disenrolled students may have more than 500 computers, which Einstein apparently made no effort to recover. In contrast to the above evidence adduced at the hearing by Morrisville, Einstein suggests that its inability to track the computers was "temporary, caused by factors outside Einstein's control, and was not material. *Notice of Intention to Appeal*, p. 12. CAB rejects this contention. The number of computers unaccounted for and their value are indeed material. Moreover, if Einstein had information on the location of the

¹⁵For example, under all the facts concerning Einstein's fiscal and educational condition one might consider first spending approximately \$180,000 on costs associated with completing the IEPs of the 28 students who were without an IEP, rather than paying bonuses to teachers and severance to administrators.

“missing” computers and its efforts to recover them, that evidence should have been introduced at the hearing below.

CAB has given due consideration to the findings of Morrisville regarding Einstein’s fiscal management. Morrisville’s findings are adopted as set forth above. As demonstrated in the above discussion, the hearing record is replete with evidence of actions and inactions constituting fiscal mismanagement. Thus, CAB concludes that Einstein failed to use generally accepted standards of financial management and that such a failure constitutes a ground for revocation of the school’s charter.

4. Graduation of Seniors

The final ground for revocation to be addressed herein concerns graduation. Morrisville advised Einstein that it was concerned about the fact that the number of students eligible for graduation originally specified to Morrisville was contradicted by subsequently received information and that Einstein changed its graduation requirements at or near the end of the year. *Notice of Revocation*, p. 6. Morrisville contended that these facts constituted grounds for revocation under the CSL. The specific provision in questions states that revocation may be based upon failure to meet the student performance requirements of applicable State Board of Education regulations or student performance standards in the school’s charter. 24 P.S. §17-1729-A(a)(2).

CAB disagrees with Morrisville. The applicable student performance regulations are the provisions regarding academic standards and assessment. 22 Pa. Code §4.1 et. seq. These regulations require all public schools, including charters, to develop and file with the Department strategic plans,

the content of which is set forth in the regulations. 22 Pa. Code §4.13(a)&(c). In addition, they include the academic standards which will guide the curricula used by schools and which will serve as the measure against which students are periodically assessed.¹⁶ Finally, the regulation implements a statewide assessment system in which all public schools and their students must participate and also provides for a local assessment, which in this case would be the responsibility of Einstein. 22 Pa. Code §4.51, 4.52.

The record in this case is devoid of any evidence that Einstein has violated the provisions of Chapter 4. Moreover, none of the findings of fact made by Morrisville relate specifically to any requirement of this Chapter. Thus, to the extent that Morrisville purported to revoke Einstein's charter under section 1729(a)(2) of the CSL for violation of Chapter 4, that ground for revocation and any findings of fact related thereto are rejected.

In addition, CAB has reviewed Einstein's charter and amended charter concerning both the issues of student performance and graduation. CAB has considered the relevant provisions thereof in light of the findings made by Morrisville and again has found no violation of performance standards to have occurred.¹⁷ Thus, for the reasons set forth above,

¹⁶Specific academic standards in the various subjects taught in the public schools have been adopted over time by the State Board of Education and have been included as appendices to the Chapter 4 regulations. They are: Appendix A Academic Standards for Reading, Writing, Speaking and Listening; Appendix B Academic Standards for Science and Technology and Environment and Ecology; Appendix C Academic Standards for Civics and Government an Economics and Geography and History; Appendix D Academic Standards for the Arts and Humanities and Health, Safety and Physical Education.

¹⁷CAB agrees that the record establishes some potentially significant issues regarding accounting for student instructional time and the preparation and maintenance of records regarding attendance and student work. It is likely that these issues were the cause of the often-shifting number of students identified as "seniors" who would be entitled to graduate. However, these matters were not among the reasons included in the revocation notice.

Morrisville's findings regarding the graduation issue are rejected because they do not support a proper ground for revocation.

V. CONCLUSION

The findings of fact made by Morrisville, as set forth or restated in Part II of this opinion are adopted as being supported by substantial evidence in the record of this appeal. The facts concerning graduation are rejected as discussed above. That notwithstanding, the other three grounds for revocation are clearly supported by the evidence and each such ground independently is sufficient grounds for revocation of Einstein's charter. Thus, the decision of the Board of Directors of the Morrisville Borough School District is AFFIRMED.

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION**

STATE CHARTER SCHOOL APPEAL BOARD

In Re: Einstein Academy Charter School :

**Appeal from revocation of charter by : Docket No. CAB 2002-6
the Morrisville Borough School District :**

ORDER

AND NOW, this 5th day of June, 2003, based upon the foregoing and the vote of this CAB¹⁸, the November 13, 2002 decision of the Board of Directors of the Morrisville Borough School District revoking the charter of the Einstein Academy Charter School is affirmed and the December 13, 2002 appeal of the Charter School is denied. This decision will become effective of June 30, 2003, in order that the students enrolled in Einstein may complete the 2002-2003 school year.

For the State Charter School Appeal Board,

Vicki L. Phillips
Chairperson

Date Mailed:

¹⁸At the Board's May 14, 2003 meeting, the appeal was denied by a vote of 6-0, with members Bunn, Giorno, Melnick, Phillips, Reeves, and Shipula voting to deny the appeal. Board member Salinger was excused.