

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

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| Career Connections Charter High School, | : | |
| Petitioner | : | |
| | : | |
| v. | : | Docket No. CAB 2012-12 |
| | : | |
| School District of Pittsburgh, | : | |
| Respondent | : | |

OPINION

HISTORY

In accordance with the Charter School Law, 24 P.S. § 17-1701-A *et seq.* (“CSL”), this matter comes before the Pennsylvania State Charter School Appeal Board (“CAB”) on the appeal by Career Connections Charter High School (“CCCHS”) from the Adjudication and Resolution adopted on August 22, 2012 (“Adjudication”) by the Board of Public Education for the School District of Pittsburgh (“Pittsburgh”) which declined to renew CCCHS’s charter. Pittsburgh originally granted a three-year charter to CCCHS in 1998 and renewed it in 2001 and again in 2007, subject to a Resolution which incorporated action plans and recommendations of the School District Review Team to address shortcomings in CCCHS’s operations.

On July 7, 2011, CCCHS wrote to the district seeking renewal of its charter for an additional five-year term. The School District’s Review Team subsequently conducted a comprehensive review, and in March 2012 the Pittsburgh Board of Public Education voted not to renew the charter of CCCHS. A letter dated May 7, 2012 (“Notice of Nonrenewal”) from the School District’s solicitor provided notice of the reasons for the nonrenewal, as well as notice of the date of a public hearing to be held pertaining to the nonrenewal. The reasons for nonrenewal were: (1) one or more material violations of any of the conditions, standards or procedures

contained in the written charter; (2) failure to meet the requirements of student performance set forth in 22 Pa. Code Ch. 4 (relating to curriculum) or failure to meet any performance standards set forth in the written charter; (3) failure to meet generally accepted standards of fiscal management or audit requirements; (4) violation of provisions of the Charter School Law; and (5) violation of provisions of law from which the charter school had not been exempted. After public hearings on May 31, June 12, and June 15, 2012, Pittsburgh adopted the Adjudication declining to renew CCCHS's charter.

CCCHS filed a Notice of Appeal to the CAB on September 20, 2012 and an Amended Notice on November 30, 2012, to which Pittsburgh filed an Answer on December 20, 2012.¹ A hearing officer was appointed and issued an Order Establishing Briefing Schedule dated January 8, 2013, after which the School District filed the certified record on January 22, 2013. Thereafter, the parties filed briefs in support of their respective positions on appeal and appeared before CAB on July 30, 2013. For the reasons set for below, the CAB holds that Pittsburgh had sufficient legal grounds, and provided sufficient evidence in support of those legal grounds, to justify its refusal to renew the charter of CCCHS under the CSL at section 1729-A(a)(1) and (2), 24 P.S. § 17-1729-A(a)(1) and (2).

¹ The School District had filed a Motion to Quash Purported Appeal for failure to conform to pleading rules on October 10, 2012, to which CCCHS responded on October 15, 2012. Then, on October 22, 2012, CCCHS filed a Motion for a Default Judgment because Pittsburgh has not answered the appeal. After Pittsburgh filed a response on October 31, 2012, a conference call with the CAB's counsel resulted in agreement that CCCHS would be permitted to amend its timely-filed appeal and that Pittsburgh would be required to file an answer to the amended petition for appeal within 20 days. The parties made those filings in accordance with the established deadlines.

FINDINGS OF FACT

I. PROCEDURAL HISTORY

1. CCCHS initially applied for a charter from Pittsburgh in 1998. School District ("S.D.") Exhibit 1a.

2. The charter application proposed that the School would offer a focused school to work program. . . . It will, however, carve out an education "niche" and stay focused on the strategy of preparing students for choices in one of three career clusters. Upon graduation, students will be prepared to enter the workforce in one of these fields or, if they so choose, pursue post-secondary education in one of these fields.

S.D. Exhibit 1a at 6.

3. The School District's Review Team reviewed the application and recommended to the Board of Public Education that the application should be granted, citing the following reasons:

- a. The applicant has authored a proposal that addresses virtually every component of the application review form in detail.
- b. Clarity of the vision and mission statement is exemplary.
- c. The educational goals, curriculum and course descriptions are sufficiently detailed to facilitate the completion and implementation of the proposed curriculum.
- d. The school-to-career emphasis, beginning at grade 9, is a clear alternative to current Pittsburgh programming.
- e. The availability of an existing facility increases the school's visibility in the community and their capability of opening expeditiously.
- f. A unique feature includes a student-based enterprise developed in partnership with area foundations and local business leaders, in which students operate their own storefronts as entrepreneurs.
- g. The applicant enjoys a history of working with culturally diverse inner-city youth within the school and other environments.

h. The charter's ability to access the support available in the Boys and Girls Club infrastructure will contribute to the school's success.

S.D. Exhibit 1b.

4. Pittsburgh granted CCCHS an initial three-year charter in 1998, and the school began operating in the 1999 – 2000 school year. Notes of Testimony, June 15, 2012 (“NT III”) at 103.

5. The School District renewed the charter of CCCHS in 2002 for an additional five-year term. NT III at 103 – 104.

6. On May 1, 2007, the School District renewed the CCCHS charter for an additional five-year term, subject to a March 21, 2007 Resolution of the Board of Public Education indicating that the School District would continue to actively monitor CCCHS's progress according to Action Plans for improvement negotiated during the renewal process. S.D. Exhibit 2h; NT I at 34.

7. By letter dated July 1, 2011, CCCHS notified the School District in writing of CCCHS's intent to seek renewal of its charter for an additional five-year term. S.D. Exhibit 4a; NT I at 42.

8. The Pittsburgh Review Team conducted a site visit on October 31, 2011 and reviewed requested materials which were available in binders. However, no one from CCCHS made a presentation to the Review Team, which had been the practice in past annual and comprehensive reviews. Nor did CCCHS provide an agenda indicating which classrooms the Review Team would see and with whom they would speak. NT I at 44, 46, 49 – 50, 139.

9. Copies of the written materials were not provided to the Review Team, and the only item that CCCHS submitted in support of its renewal request was a memo entitled “Justification for Renewal.” S.D. Exhibit 4b; NT I at 44, 45.

10. Review Team members conducted classroom observations which lasted 5 to 30 minutes, spoke with students, and interviewed two parents made available by CCCHS. NT I at 48 – 49, 74 – 75, 139, 140 – 141, 182 – 183, 203 – 204; Notes of Testimony, June 12, 2012 (“NT II”) at 298.

11. No one from CCCHS assisted the Review Team or made themselves available in the conference room for questions or to point out or explain things in the materials; but members of the Review Team sought out the Director of Internships and Community Partnerships at CCCHS with specific questions about the internship program. NT I at 47 – 48, 139, 145, 146 – 147, 216 – 217; NT III at 5.

12. On March 6, 2012, the Review Team recommended to the Board of Public Education that the charter not be renewed because CCCHS did not continue to meet all conditions, standards and procedures contained in the written charter agreement; did not continue to meet requirements for student performance; did not provide the School District with expanded choices in the types of educational opportunities currently being offered by the school system and was not able to serve as a model to other schools in the system; did not show a considerable level of parental involvement in the school or that a majority of parents were satisfied with the school; and had not addressed various facilities issues. S.D. Exhibit 4c.

13. On March 21, 2012, the Pittsburgh Board of Public Education voted at its legislative meeting to accept the recommendation of the Review Team that the School District not renew the charter for CCCHS. S.D. Exhibit 4d.

14. By letter dated May 7, 2012 (“Notice of Nonrenewal”), Pittsburgh notified the Solicitor for CCCHS of the grounds for nonrenewal and the date of the public hearing. *Id.*

15. The formal Notice of Nonrenewal set forth 23 specific paragraphs enumerating the bases for the nonrenewal, as follows:

- a. CCCHS has not made Adequate Yearly Progress for the past six (6) years and is in Corrective Action 1.
- b. Mathematics performance declined 32.5 percentage points from 2009 – 2010. PDE results show that the mathematics performance was 16.7% proficient/advanced for the 2010 – 2011 school year.
- c. PDE results show that the reading performance was 41.7% proficient/advanced for the 2010 – 2011 school year.
- d. There are no courses created to support increased achievement of students performing below state standards in mathematics and reading.
- e. CCCHS does not offer students the choice between two daily schedules as set forth in the charter application.
- f. CCCHS does not provide a school year divided into two semesters of three terms each for a 47-week school year as set forth in the charter application.
- g. The minimum enrollment in the application is 280 students, and the current enrollment is 238 students with no waiting list.
- h. The current course offerings do not match the course offerings listed in the application.
- i. Internships are required by all students in their senior year who are not dual enrolled or have CO-OP. There was very little evidence that supported the development and academic needs of students in their internships even though the application states that following a basic skills assessment, students will be given an individualized academic plan which will include career interest inventories and vocational aptitude assessments each year overseen by a Career Services Coordinator. Students spend the majority of the school week attending internships in their senior year, and these internship assignments do not show that students have valuable and meaningful learning experiences as promised in the application.
- j. Internship selections for students are not academically or developmentally relevant for students. Many of the internship locations were chosen by the students for personal gain or due to prior employment.

k. The mission of CCCHS notes that the school focuses on career goals, small class sizes, interdisciplinary curriculum, innovative teaching techniques and has an internship component. CCCHS offers a dual enrollment program for students interested in earning college credits consistent with the charter application. However, dual enrollment is pursued in lieu of the internship component rather than as a complement to the internship component in violation of the charter.

l. Choices for internships and business partnerships are lacking.

m. The selection process for internships is minimal and the monitoring of students in their internships is minimal.

n. Three classroom observations and review of the curriculum materials revealed no evidence of innovative teaching strategies, active teaching, interdisciplinary curriculum, or adaptive learning experiences as promised in the application. The "stand and deliver" model of instruction was evident in all three classrooms.

o. The professional development program does not monitor the utilization of new teaching practices or their effectiveness.

p. There was no evidence of innovative teaching strategies to engage at-risk students.

q. During the observations, several students were not able to communicate academic requirements nor what they are expected to do to accomplish them.

r. During the classroom observations, several students were not actively engaged in learning.

s. There was no evidence of teachers implementing innovative instructional strategies that increase student engagement and achievement.

t. The educational program is low rigor. No higher level courses or gifted courses are offered. Students are not knowledgeable about links to careers. There is no focus on health care and services, manufacturing, and business services as promised in the application.

u. Documentation was insufficient to determine if the previous year's recommendation of designing and implementing a model of classroom modeling/coaching, observation, feedback, support and accountability with the Professional Development Plan was followed.

v. CCCHS is not placing any funds in the school's budgetary reserve.

w. Facilities issues as noted in the Radelet McCarthy & Polletta memo dated November 28, 2011 and incorporated herein by reference.

Id.

16. Without assigning any of the 23 enumerated deficiencies to a specific category of violation, the Notice of Nonrenewal also stated that:

These deficiencies support the following causes for nonrenewal of the charter for CCCHS:

1. One or more material violations of any of the conditions, standards or procedures contained in the written charter.

2. Failure to meet the requirements of student performance set forth in 22 Pa. Code Ch. 4 (relating to curriculum) or failure to meet any performance standards set forth in the written charter.

3. Failure to meet generally accepted standards of fiscal management or audit requirements.

4. Violation of provisions of the Charter School Law.

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.

Id.

17. Public hearings on the Notice of Nonrenewal were held on May 31, 2012, June 12, 2012, and June 15, 2012, before Hearing Officer John S. Toohey, Esquire. CR Tab O²; NT 1, *passim*; NT II, *passim*; NT III, *passim*.

²The certified record filed by the School District included, but was not limited to, one three-ring binder entitled Certified Record which contains documents identified through tabbed separator pages labeled A through O. While these are documents relating this matter's procedural history up to and including the School District's issuance of its Adjudication and Resolution, which CCCHS has appealed in this matter, they were not exhibits in the proceeding below. Therefore, any citations to the documents included in that binder will be denoted in this decision as "CR Tab" followed by the appropriate tab letter as assigned in the binder entitled Certified Record.

18. A 30-day public comment period commenced upon the close of the last day of the public hearing on June 15, 2012, during which time public comments were received regarding the proposed nonrenewal of CCCHS's charter. CR Tabs G and H; NT III at 160.

19. By letter dated July 27, 2012, the School supplemented the evidentiary record in the nonrenewal proceeding with excerpts from the School's 2011 – 2012 Adequate Yearly Progress ("AYP") Report. CR Tab I; CCCHS Exhibit 54.

20. The hearing officer submitted Findings of Fact and Conclusions of Law to the Pittsburgh Board on August 15, 2012. CR Tab O.

21. At its public comment meeting on August 20, 2012, the Pittsburgh Board heard oral comments concerning the possible nonrenewal of CCCHS's charter. CR Tab M.

22. At its public meeting on August 22, 2012, the Pittsburgh Board adopted by Resolution the hearing officer's findings of fact and conclusions of law in their entirety³ ("Adjudication") and declined to renew the charter of CCCHS for the requested term. CR Tabs N and O.

23. On September 20, 2012, CCCHS filed a Notice of Appeal with the State Charter School Appeal Board ("CAB"). Docket No. CAB 2012-12.

24. On or about November 29, 2012, CCCHS filed its Amended Petition of Appeal with the CAB. *Id.*

II. THE NOTICE OF NONRENEWAL AND ADJUDICATION

A. Grounds Set Forth in the Adjudication Which Were Not Set Forth in the Notice of Nonrenewal

³The Findings of Fact, Conclusions of Law and Resolution of the Pittsburgh Board, adopted August 22, 2012, will be referred to in the remainder of this decision collectively as "Adjudication."

25. The School District's Adjudication contained either findings of fact or conclusions of law, or both, referencing the following grounds for nonrenewal which were not originally set forth in the Notice of Nonrenewal:

- a. Findings of fact pertaining to CCCHS's termination of a management services contract with Academic Leadership Services ("ALS").

CR Tab O (Adjudication, Findings of Fact 211 – 217).

- b. Findings of Fact and a Conclusion of Law pertaining to CCCHS's entering into a prepaid 10-year lease for its facility from the Boys & Girls Club.

CR Tab O (Adjudication, Findings of Fact 238 – 240; Conclusion of Law 271).

- c. Findings of Fact pertaining to CCCHS's modification of its curriculum by beginning to use the Understanding by Design ("UbD") curriculum.

CR Tab O (Adjudication, Findings of Fact 196 – 197).

- d. Findings of Fact and Conclusions of Law pertaining to the Highly Qualified Teacher ("HQT") requirements of the No Child Left Behind ("NCLB") Act.

CR Tab O (Adjudication, Findings of Fact 218 – 220; Conclusions of Law 265(g), 274 – 277).

- e. CCCHS does not have a high quality educational program...

CR Tab O (Adjudication, Conclusion of Law 279).

B. Grounds Set Forth in the Adjudication Which Also Were Set Forth in the Notice of Nonrenewal

- 1. Material Violations of Charter/Failure to Be Faithful to the Terms of the Charter (Conclusions of Law 265(a) – (g) and 279).**

- a. Failure to offer a choice between two daily schedules (Conclusions of Law 265(a) and 279).**

26. CCCHS's charter application stated that the school would offer two alternative daily instructional schedules, the first in which the school day would last from 8:15 a.m. to 2:15 p.m., and the second in which the school day would last from 10:45 a.m. to 4:45 p.m. S.D. Exhibit 1a at 28; NT I at 71.

27. In its charter application, CCCHS promoted the two alternative daily instructional schedules, which it termed the "flexible daily schedule," as a way in which the proposed charter school could serve as a model for other public schools in the School District. S.D. Exhibit 1a at 30.

28. The original charter application Review Team specifically noted this innovative flexible daily schedule in its recommendation to approve the School. S.D. Exhibit 1b at 4.

29. CCCHS utilized two alternative daily instructional schedules through the 2004 – 2005 school year. CCCHS Exhibit 14; NT at 266 – 267.

30. CCCHS utilized those two alternative daily schedules in order to maintain the younger students on a separate schedule from the older students in order to avoid negative influence on the younger students by the older students. NT II at 267, 288.

31. CCCHS stopped utilizing the two alternative daily schedules after the 2004 – 2005 school year because the staff had no problems or concerns about a negative influence from the upper grades on the 9th graders, and because the two alternative daily schedules created transportation issues related to feeder districts having to transport two sets of students to CCCHS at two different times. CCCHS Exhibit 15; NT II at 267 – 268.

32. CCCHS does not currently maintain two alternative daily schedules. CCCHS Exhibit 14; NT I at 71; NT II at 268 – 269.

33. CCCHS had been operating under the revised unified daily schedule for two years when Pittsburgh renewed its charter in 2007. NT II at 271.

34. There is no evidence in the record to demonstrate that CCCHS sought the approval of Pittsburgh for the change to CCCHS's daily schedule or that CCCHS sought the permission of Pittsburgh for the amendment of CCCHS's charter as to its daily schedule. Record, *passim*.

35. The revised unified daily schedule has been in place for over five years, but Pittsburgh has never stated any objections to it until the current charter renewal proceeding. NT II at 271.

**b. Failure to offer a year-round calendar
(Conclusions of Law 265(b) and 279).**

36. CCCHS's charter application also stated that it would offer a "second innovation" by dividing the school year into two semesters of three terms each to create a 47-week school year. S.D. Exhibit 1a at 28.

37. CCCHS's charter application further stated that the School's instructional year would be organized into two semesters, each comprising three terms, for a 190-day school year. S.D. Exhibit 1a at 28; NT II at 271 – 272.

38. CCCHS promoted the 47-week calendar as a way in which the proposed charter school could serve as a model for other public schools in the School District. S.D. Exhibit 1a at 30.

39. The original charter application Review Team specifically noted this innovative 47-week calendar in its recommendation to approve the school. S.D. Exhibit 1b at 4.

40. At some point, CCCHS adopted a traditional two-semester, four-term calendar. NT II at 272.

41. Following its adoption each June, the CCCHS calendar for the forthcoming school year is forwarded to Pittsburgh, the calendar is included in each annual report submitted by CCCHS to the PDE and Pittsburgh, and the calendar is provided annually to the Pittsburgh Review Team. NT II at 275, 302 – 303, 303 – 304.

42. There is no evidence in the record to demonstrate that CCCHS sought the approval of Pittsburgh for the change to CCCHS's school calendar or that CCCHS sought the permission of Pittsburgh for the amendment of CCCHS's charter as to its school calendar. Record, *passim*.

c. Failure to maintain adequate support as shown in the decreasing enrollment numbers (Conclusions of Law 265(c) and 279).

43. CCCHS proposed in its charter application to educate a maximum of 360 students in grades 9 through 12, but it did not establish a minimum enrollment requirement. S.D. Exhibit 1a at 9 and *passim*.

44. CCCHS estimated in its application that in order to maintain financial viability, it would need to enroll 280 students in years four and five. It did not estimate the number of enrollees it would require thereafter to remain financially viable. S.D. Exhibit 1a at 35.

45. CCCHS's starting enrollment, measured as of October 1 of each school year, over the last six school years was 325 students in 2005 – 2006; 337 in 2006 – 2007; 269 students in 2007 – 2008; 248 students in 2008 – 2009; 276 students in 2009 – 2010; and 263 students in 2010 – 2011. CCCHS Exhibit 19.

46. CCCHS's year-end enrollment, over the last six school years, was 259 in 2005 – 2006; 295 in 2006 – 2007; 259 in 2007 – 2008; 238 in 2008 – 2009; 238 in 2009 – 2010; and 238 students at the end of 2010 – 2011. S.D. Exhibit 6d; NT III at 141.

47. Parents who are dissatisfied with the School can simply demonstrate their preferences by leaving. NT III at 122.

48. CCCHS has not needed to maintain an admission wait list or conduct an admission lottery over the last five years due to low application numbers. S.D. Exhibits 7b and 7c; NT III at 142.

d. Failure to offer an interdisciplinary curriculum (Conclusions of Law 265(d) and 279).

49. In its initial charter application, CCCHS proposed to take a “systematic approach to education in which course offerings will be geared primarily toward School-to-Work.” S.D. Exhibit 1a at 12.

50. CCCHS’s charter application also stated that “[t]he curriculum will be comprised of courses that will use an interdisciplinary or integrated approach to classroom instruction with ‘applied’ learning experiences for students.” S.D. Exhibit 1a at 16.

51. The School District’s initial Review Team noted that the charter of CCCHS would provide expanded educational opportunities within the school system because “the primary focus of the school will be geared towards school-to-career using an applied, integrated and interdisciplinary curriculum beginning in ninth grade.” S.D. Exhibit 1b at 1.

52. According to its charter application, CCCHS proposed to have an interdisciplinary approach integrating language arts and social studies, mathematics and the sciences, and life skills and humanities. S.D. Exhibit 1a at 17, 19, 22.

53. Throughout its charter application, as well as in subsequent statements of mission in its charter annual report to the PDE, CCCHS has emphasized that its curriculum is

“interdisciplinary.” S.D. Exhibit 1a at 16 – 23; S.D. Exhibit 7c at Section I (Mission); NT I at 144.

54. An “interdisciplinary curriculum” may be defined as one that gets all teachers on a floor or in select classes together to teach a specific concept by adapting it to what each teacher is teaching. NT II at 35.

55. In his examination of the CCCHS curriculum documents, the Social Studies supervisor for the School District and a member of the School District’s Review Team, did not see connections being logically built across subject areas or utilizing real world and life themes; nor did he note any interdisciplinary approaches to the curriculum in his review of separate curriculum areas. NT I at 191, NT I at 194 – 195, 197 – 198.

56. CCCHS provides common planning time for teachers to support interdisciplinary activities. NT II at 173.

57. Additionally, CCCHS’s teaching staff creates lesson plans and interdisciplinary units. NT II at 50, 141.

58. CCCHS teachers coordinate certain lessons with teachers in other departments. NT I at 268 – 270.

59. By way of general example, CCCHS’s interdisciplinary activities might include the coordination of English and Social Studies content, focusing on community and how a society socializes children, by choosing novels to read which illustrate such concepts. Also, CCCHS teachers weave careers and content about careers into every subject area. *Id.*

60. This integration would include coordination of the subject matter and pacing of lessons across all of the subject areas, i.e., integration of sociology and English lessons. NT I at 268 – 269.

61. The seniors' graduation project is also interdisciplinary because the students must analyze data from various sources, delve into the history of a career, write, research, present, and pull their internship experience into the final project. NT I at 270 – 271.

62. The senior project, among other things, incorporates topics across marketing, e.g., how to present an idea persuasively, and English, e.g., research and writing to effectively present ideas. CCCHS Exhibit 48; NT II at 138 – 139.

63. Also, discussion of careers occurs across all classes, so the School's career focus is interdisciplinary as well. NT II at 36, 167.

64. An interdisciplinary curriculum is not the same thing as cross-curricular projects, and the latter is not necessarily indicative of the former, although it may be. NT I at 89, NT II at 276.

e. Failure to offer valuable and meaningful learning experiences to all students through the use of the internship (Conclusions of Law 265(e) and 279).

65. In its charter application, CCCHS stated that its primary focus “will be on School-to-Work,” and that “[c]ollaboratives with business and industry within the District and region will present students with opportunities to investigate and prepare for job entry in one of the three primary areas of health care & services, manufacturing, and business services.” S.D. Exhibit 1a at 23, 25.

66. Additionally, in its charter application, CCCHS stated that one of the three core elements of School-to-Work (“STW”) is work-based learning which includes career exploration, work experience, and structured training and mentoring at job sites, and pointed to “its mission to incorporate “real world-of-work” experiences into the curriculum.” S.D. Exhibit 1a at 24.

67. As part of work-based learning, CCCHS stated in its charter application that its program will provide students with work-based learning opportunities through a number of different avenues including internships, part-time jobs, co-ops and apprenticeships; that students would select a “career cluster” which will determine placement into various experiential learning activities; and that students would possibly be able to do “concurrent enrollment in local trade or vocational schools as their career interests, goals, progress and performance are more clearly defined.” S.D. Exhibit 1a at 25.

68. CCCHS also stated in its charter application that its mission for STW initiatives “will involve: work-site learning, that is, learning through working experience.” S.D. Exhibit 1a at 26.

69. The School District’s Review Team cited CCCHS’s school-to-career emphasis, beginning at grade 9, as a clear alternative to current Pittsburgh programming and as one of the reasons the Review Team recommended the approval of CCCHS’s charter application. S.D. Exhibit 1b at 9.

70. In order to graduate, each senior at CCCHS must successfully participate in either an internship at a local business or dual enrollment at a local college, the Community College of Allegheny County (“CCAC”). NT I at 242; NT III at 6, 55 – 56.

71. The CCCHS internship component is not universal despite its inclusion in the Mission Statement, in that students participating in dual enrollment at the CCAC are exempted from the internship requirement. NT III at 56.

72. Instruction in career skills and career awareness is infused throughout classes in other subject areas at CCCHS. CCCHS Exhibits 27 and 49; NT II at 264.

73. Students in the dual enrollment program take two college classes in the fall and two in the spring, and in so doing, CCCHS allows them to earn successful completion of the internship program in place of completing an internship. NT III at 56.

74. Dual enrollment is a selective program in which seniors spend three days per week in a college classroom, earning college credit while still enrolled at CCCHS. CCCHS Exhibit 39; NT III at 43.

75. The internship sites available for senior internships include various employers and positions relating to health care and services, manufacturing, and business services, including daycare, food service, and retail. CCCHS Exhibit 35.

76. Internship sites which CCCHS includes in its list of business partners include apparently (based on the name) health-related sites such as the American Red Cross, CCAC Center for Health Careers, the Jewish Healthcare Foundation, CVS Pharmacy, VCA Fox Chapel Animal Hospital, UPMC (St. Margaret's Hospital), Dr. Petraglia Dentist Office, West Penn Hospital, Addison Behavioral Care, and Rite Aid. CCCHS Exhibit 35.

77. CCCHS teachers and staff, visit each internship site on a weekly basis, meet with each site supervisor on a weekly basis, receive weekly progress reports on each intern, and receive mid-term and end-of-term evaluations of each intern. CCCHS Exhibits 30 and 33; NT I at 232-33; NT III at 20, 38 – 39.

78. Internship site supervisors are required to submit weekly logs to CCCHS. NT I at 235; NT III at 20 – 21.

79. CCCHS teachers and staff provide ongoing support to interns, helping them problem-solve any conflicts or other issues that arise at the internship site. CCCHS Exhibits 30 and 33; NT I at 232 – 233; NT III at 20, 38 – 39.

80. Similarly, CCCHS teachers and staff help dual enrollment students through the process, and sometimes, through the struggle of adapting to a college environment. NT I at 242 – 243.

81. CCCHS students who intern at preexisting jobs are subject to the same academic requirements as any other student in the internship program. NT III at 32 – 34.

82. A job site which sponsors a preexisting employee as an intern is subject to the same reporting requirements as any other internship site. NT III at 32 – 34.

83. Internship students are expected to report to work on a timely, regular and reliable basis, regardless of the location of the internship site; learn to work with supervisors, coworkers and, in some locations, customers; abide by safety and health regulations; engage in problem-solving and critical thinking; and develop “soft skills,” which are those types of professional attributes that are required in the working world. NT I at 250 – 252, 253, 254.

84. Internships at work sites provide students with an outside-of-the-classroom environment that cannot be recreated in a classroom. NT I at 246.

85. Dual enrollment students must learn to adapt to a new and different learning environment with many students, very different interactions with the teacher or professor, students of varying ages, and a challenging problem-solving environment. NT I at 242 – 243.

86. The dual enrollment experience relates to job-readiness for the potential career from the standpoint that some students want to pursue careers that require a college degree. Dual enrollment prepares them to be successful in a college environment. NT I at 244.

87. Completion of either the internship or the dual enrollment program is the culmination of the various career-focused instructional programs which all CCCHS students

experience throughout their time at the school and which are infused throughout the school's curriculum. CCCHS Exhibit 23; NT II at 253 – 266; NT III at 6 – 8.

f. Failure to offer the courses promised in its application (Conclusions of Law 265(f) and 279).

88. The original CCCHS charter application included the following course offerings:
- a. Applied Learning & Career Exploration I;
 - b. Applied Learning & Career Exploration II;
 - c. Cooperative Education;
 - d. Career Internship;
 - e. Career Cluster;
 - f. Health & Nutrition Education I;
 - g. Health & Nutrition Education II;
 - h. Physical Education I;
 - i. Physical Education II;
 - j. Life Skills I;
 - k. Life Skills II;
 - l. English I – Basic Reading & Writing;
 - m. English II – Global Communications;
 - n. English III;
 - o. English IV;
 - p. Civics & Consumer Economics;
 - q. U.S. History and Government;
 - r. Cultural Geography;

- s. Applied Math I;
- t. Applied Math II;
- u. Applied Math III;
- v. Introduction to Computers;
- w. Computer Applications;
- x. Introduction to Computer Programming;
- y. Computers & Technology in the Workplace;
- z. Applied Sciences I;
- aa. Applied Sciences II;
- bb. Applied Sciences III;
- cc. Humanities I;
- dd. Humanities II; and
- ee. Concurrent enrollment in courses offered from partner institutions.

S.D. Exhibit 1b, Appendix B; NT I at 72.

89. Currently CCCHS does not offer courses entitled Cooperative Education, Career Cluster, Life Skills I, Life Skills II, Consumer Economics, Cultural Geography, Introduction to Computer Programming, Humanities I, and Humanities II. S.D. Exhibit 7a; CCCHS Exhibits 9 and 10; NT I at 73.

90. The internship at CCCHS currently falls under two courses entitled “Education – Workplace Experience” and “Job Corps/Internship” which correlate to the “Cooperative Education” and “Career Internship” courses promised in the original charter application. NT II at 250 – 251.

91. CCCHS has no Consumer Economics course. NT II at 284.

92. CCCHS has no Humanities 1 or Humanities 2 course, or any equivalent that focuses on all of the things listed in the original charter application under those course titles; it does have courses that focus on parts of those things. *Id.*

93. CCCHS has courses that cover the subject matter of the course entitled “Introduction to Computer Programming” in the original charter application. NT II at 252, 284.

94. The “Career Cluster” course, as proposed in the charter application, was to be four semesters in grades 11 and 12 where students would select one of the three career tracks: health care and services, manufacturing, or business services. S.D. Exhibit 1b, Appendix B.

95. The description of “Career Exploration III” in CCCHS’s current course list is similar to the description of the “Career Cluster” course from the original charter application. S.D. Exhibit 1a at Appendix B; CCCHS Exhibit 8.

96. The description of “Cultural Geography” in the original charter application is similar to the descriptions of “World Cultures” and “College Prep World Cultures” in CCCHS’s current course list. S.D. Exhibit 1a at Appendix B; CCCHS Exhibit 8.

97. The descriptions of “Life Skills I” and “Life Skills II” in the original charter application are similar to the descriptions of “Sociology” and “College Sociology – LaRoche” in CCCHS’s current course list. S.D. Exhibit 1a at Appendix B; CCCHS Exhibit 8.

98. CCCHS offers courses approved through LaRoche College, as well as courses through Lincoln Interactive and dual enrollment courses through the Community College of Allegheny County. NT II at 243, 244, 248 and CCCHS Exhibits 26, 40.

99. There is no evidence in the record indicating that CCCHS has ever requested an amendment to its charter or contacted the School District to inform it of planned modifications to CCCHS’s educational program promised in its original charter application. Record, *passim*.

2. Failure to Comply With Student Performance Standards Set Forth in Chapter 4 By Failing to Make AYP, Failure to Show Sustained Progress in Improving Student Performance, Failure to Improve Student Learning, and Failure to Meet the Goals and Standards Related to Academic Performance Identified in Its Charter (Conclusions of Law 259 – 261 and 279).

100. With regard to student performance, the CCCHS charter application contains no specific student performance requirements, but states, generally, that the School has a “commitment to adhere to and prepare students to meet the standards of the Pittsburgh School District, the Commonwealth of Pennsylvania, and for comparative analysis on National norm-referenced assessments.” S.D. Exhibit 1a at 34.

101. In Pennsylvania, the Pennsylvania System of School Assessment (“PSSA”) test is used, among other things, to determine the degree to which school programs enable students to attain proficiency as to academic standards under applicable regulations at 22 Pa. Code. §4.12 (related to academic standards), and to provide information to the general public on school performance. 22 Pa. Code § 4.51(a)(2) and (5); NT I at 52.

102. The PSSA test is administered annually, in the spring, to all students in grades three, four, five, six, seven, eight and eleven. 22 Pa. Code § 4.51(d).

103. The PSSA assesses students’ levels of proficiency in accordance with standards established by the State, assessing Mathematics and Reading for grades 3 – 8 and 11, writing for grades 5, 8 and 11, and Science for grades 4, 8 and 11. 22 Pa. Code § 4.51(a)(2) and (d); NT II at 58.

104. The levels of proficiency gauged by the PSSA test scores are classified as advanced, proficient, basic and below basic. 22 Pa. Code §4.51(b)(5); NT at 53.

105. Adequate yearly progress (“AYP”) is gauged by student performance goals in Reading and Math which the State establishes for schools and districts to achieve each year. NT I at 51.

106. The concept of AYP was implemented in 2002. *Id.*

107. The Pennsylvania Department of Education (“PDE”) determines each school’s annual AYP status by looking at student performance on the PSSAs in Reading and Math, high school graduation rate, and PSSA participation rate. CCCHS Exhibit 3; NT I at 52; NT II at 58, 96.

108. Each year, the PDE establishes the percentage of students at a school that must score proficient or advanced on the PSSA test in order for the school to meet the AYP performance requirements; in addition to these student performance requirements, a certain percentage of seniors must graduate from the school and a certain percentage of 11th graders must participate in the PSSA tests. NT II at 92 – 93.

109. A school may also meet AYP by improving over the previous year’s results under the “Safe Harbor” provision, which means that if a school achieves a 10% decrease of students who scored below Proficient from the previous year, it meets the AYP target for performance.⁴ CCCHS Exhibit 4; NT II at 92 – 93, 99.

110. “Confidence Interval” is a control for sampling errors or variation across years by promoting schools or subgroups that come very close to achieving their performance goal, thus

⁴Safe Harbor “is a measure of improvement in test performance. Safe Harbor is achieved when a subgroup has greatly improved since the previous year – even though they did not meet the state goal. (The target for Safe Harbor improvement is at least a 10% reduction from the previous year of the percentage of students who scored below Proficient for reading or mathematics).” Pennsylvania Department of Education, Academic Achievement Report: 2011 – 2012, *What does it mean to Meet AYP Targets by Safe Harbor?* (visited June 14, 2013) <<http://paayp.emetric.net/Home/About#q10>>.

meeting their specific goal.⁵ Pennsylvania Department of Education, Academic Achievement Report: 2011 – 2012, *How is the Confidence Interval (C.I.) used in AYP decisions?* (visited June 14, 2013) <<http://paayp.emetric.net/Home/About#q10>>.

111. "Safe Harbor with Confidence Interval" means that a group met the performance measure by the Safe Harbor improvement criteria only when using a 75% Confidence Interval.⁶ Pennsylvania Department of Education, Academic Achievement Report: 2011 – 2012, *How can an AYP measure be met?* (visited June 14, 2013) <<http://paayp.emetric.net/Home/About#q10>>.

112. Achieving AYP depends not only on the PSSA results of the student body as a whole, but also upon the results of test-takers within various subgroups, such as white students, black students, and economically disadvantaged students; if 40 or more test-takers in a given year fall into a subgroup, then that subgroup must achieve AYP in both Reading and Math in order for the school to achieve AYP as a whole. CCCHS Exhibit 4; NT II at 93.

113. For the 2010 – 2011 school year, the Pennsylvania academic performance standards required 67% of a school's students to test at proficient or higher on the Math PSSA and 72% of a school's students to test at proficient or higher in Reading. NT I at 52.

114. For the 2010 – 2011 school year, CCCHS met only two of six academic performance standards, and achieved only the two academic performance standards for Students

⁵"Confidence intervals take into account the fact that the students tested in any particular year might not be representative of students in that school across the years. Confidence intervals control for this sampling error or variation across years by promoting schools or subgroups that come very close to achieving their performance goal, thus meeting their specific goal. In 2004, the United States Department of Education approved a 95% Confidence Interval (C.I.) in Pennsylvania for AYP performance calculations. A 95% C.I. can be used for meeting the state performance goal, while a 75% C.I. can be used for meeting the Safe Harbor target." Pennsylvania Department of Education, Academic Achievement Report: 2011 – 2012, *How is the Confidence Interval (C.I.) used in AYP decisions?* (visited June 14, 2013) <<http://paayp.emetric.net/Home/About#q10>>.

⁶Safe Harbor with Confidence Interval (SHC) means "that a group met the performance measure by the Safe Harbor improvement criteria only when using a 75% Confidence Interval. Pennsylvania Department of Education, Academic Achievement Report: 2011 – 2012, *How can an AYP measure be met?* (visited June 14, 2013) <<http://paayp.emetric.net/Home/About#q10>>.

Overall in Reading and Economically Disadvantaged in Reading through the use of Safe Harbor with Confidence Interval. S.D. Exhibit 6a; NT II at 97.

115. CCCHS did not make AYP in all school years from 2004 – 2005 through 2011 – 2012. S.D. Exhibits 5a – 5g; S.D. Exhibit 6d; CR Tab I at 13, 27; NT I at 53 – 57.

116. With regard to CCCHS's PSSA proficiency levels in Math, CCCHS did not make its proficiency target in three of the seven school years since 2005-2006 and required the application of Safe Harbor or Confidence Intervals to make its target in the other four school years.

117. Pertaining to CCCHS's PSSA proficiency levels in Reading, the school did not meet its target in two of the seven school years since 2005-2006 and required application of Safe harbor or Confidence Intervals to make its target in the remaining five school years through the 2011-2012 school year.

118. If a school does not achieve AYP in a given year, the school is categorized to a lower AYP status level, with the progression of AYP status levels, from highest to lowest, as follows: Making AYP; Warning; School Improvement I; School Improvement II; Corrective Action I; Corrective Action II. NT I at 53 – 54; NT II at 94 – 95.

119. CCCHS was in Warning status for the 2005 – 2006 school year. CCCHS Exhibit 4.

120. CCCHS was in School Improvement I status for the 2006 – 2007 school year. *Id.*

121. CCCHS was in School Improvement II status for the 2007 – 2008, 2008 – 2009, and 2009 – 2010 school years. S.D. Exhibit 6a; CCCHS Exhibit 4.

122. CCCHS was in Corrective Action I status for the 2010 – 2011 school year. S.D. Exhibit 6a; CCCHS Exhibit 4; NT I at 54.

123. CCCHS was in Making Progress – Corrective Action I status for the 2011 – 2012 school year. CR Tab I at 1.

124. According to the AYP figures, CCCHS has continually failed to meet the State’s standards of proficiency. Exhibits 5a – 5g; CR Tab I at 13, 27.

125. CCCHS’s top 12 feeder schools are Peabody High School, Schenley High School, Wilkinsburg High School, University Prep, Oliver High School, Brashear High School, Carrick High School, Penn Hills High School, Langley High School, Allderdice High School, and Woodland Hills High School. CCCHS Exhibit 2.

126. With the exception of the 2010 Math PSSA scores, the majority of the 12 top feeder schools outperformed CCCHS in both 2010 and 2011. *Id.*

127. As of the date of the hearings in this matter, Pittsburgh has closed or planned to close the majority of its most low-performing high schools, all of which were in Corrective Action II status, and all of which were among CCCHS’s 12 top feeder schools, including Schenley High School, Peabody High School, Langley High School and Oliver High School; and in 2011 – 2012, Pittsburgh had reconfigured one other low-performing high school, Westinghouse High School, which was also among CCCHS’s 12 top feeder schools. CCCHS Exhibit 2; NT I at 62; NT II at 184.

128. Overall, CCCHS has not performed as well as other School District charter schools or as well as the majority of other School District high schools. S.D. Exhibits 6b and 6d; NT I at 60, 63 – 64, 64 – 65, 65 – 66.

3. Failure To Meet Generally Accepted Standards of Fiscal Management or Audit Requirements (Conclusion of Law 270).

a. Failure to fund CCCHS’s budgetary reserve (Conclusion of Law 270).

129. CCCHS has a very conservative budgeting process, meaning that it tries not to overestimate revenues and not to underestimate expenses. NT III at 112.

130. CCCHS has never had to go to a bank to obtain a loan of any sort, has no long-term debt, and has short-term debt only in the form of payables as they come in. *Id.*

131. A budgetary reserve is the difference between an organization's assets and its liabilities, which may be made up of any liquid cash assets that could be used to cover any kind of budget shortfalls; it may also be referred to as a fund balance. NT III at 114, 115.

132. CCCHS's budget for the fiscal year that ended June 30, 2011 had a specific line item, item 5900, for budgetary reserve, which would be the amount that the charter school expected to use in that budget year from its reserve funds. CCCHS Exhibit 20; NT III at 114 – 115.

133. In fiscal year 2010 – 2011, CCCHS did not expect to use any funds from its reserve funds, so the amount at line item 5900 was \$0. CCCHS Exhibit 20; NT III at 115.

134. Although the fund balance was partially used for expenses during the 2010 – 2011 school year, the School's budgetary reserve as of June 30, 2011 was \$822,313. CCCHS Exhibits 21 and 51.

135. CCCHS has had a positive fund balance during each of the last five years. NT III at 115.

136. As of the date of the last hearing in this matter, CCCHS's most recently audited financial statements, for the year ended June 30, 2011, reflected unrestricted net assets of \$1,493,847. CCCHS Exhibit 22; NT III at 112 – 113.

137. The School's most recently completed independent audit, for the fiscal years ending June 30, 2010 and June 30, 2011, provided an unqualified opinion reflecting the auditor's

opinions that: (1) the financial statements give a true and fair view in accordance with the financial reporting framework used for the preparation and presentation of the financial statements; and (2) the auditor does not have any significant reservation regarding the matters contained in the financial statements. CCCHS Exhibit 22.

138. As of the date of the last hearing in this matter, CCCHS was operating with a budget surplus and an undesignated fund balance. CCCHS Exhibits 20 – 22, 51; NT III at 112 – 117.

4. Violations of Article XVII-A of the CSL, Violations of Law From Which CCCHS Has Not Been Exempted, and Failure to Be Faithful to the Terms of Applicable Law.

a. Violations of public school facility regulations pertaining to the health and safety of pupils, as noted in the facilities inspection report (Conclusion of Law 272 – 273 and 279).

139. Pursuant to an occupancy permit issued by the City of Pittsburgh, CCCHS has occupied the same school facility since Pittsburgh granted its charter. NT II at 310.

140. No code official has ever notified CCCHS that its facility is in violation of any applicable building code. NT II at 310 – 311, 317.

141. Pittsburgh conducts annual reviews of CCCHS, one element of which typically includes a representative of Pittsburgh inspecting CCCHS's facility. NT II at 311.

142. Following each annual review, Pittsburgh has provided CCCHS with recommendations for improving the facility, which CCCHS starts to address immediately upon receipt of the recommendations. NT II at 312.

143. CCCHS Director of School Services made notes during the course of the inspections and began making changes to fix things noted during the inspection immediately upon the inspectors' walking out the door. NT I at 123; NT II at 312, 320.

144. On October 31, 2011, Pittsburgh conducted another annual review of CCCHS's facility. Exhibit 8b; NT I at 123.

145. During the course of the October 31, 2011 inspection, Pittsburgh noted four items from the prior year's inspection which had been addressed and completed. NT I at 123, 127 – 128; NT II at 313 – 314.

146. Pittsburgh measured corridor widths during the inspection but did not say anything to the Director about corridor widths. NT II at 326.

147. Pittsburgh's report also listed five new items to be addressed and referred to the corridor widths on the existing second floor and the existing basement. S.D. Exhibit 8b; NT II at 315-317.

148. In the 11 years that CCCHS's Director of School Services has been running the maintenance and facilities department at the School, he has never received any notice from any code official that the corridor widths in question are in violation of code. NT II at 317.

CONCLUSIONS OF LAW

1. The CAB has jurisdiction in this matter. 24 P.S. § 17-1729-A(d).
2. Pursuant to the CSL at 24 P.S. § 17-1729-A(a), a school district may refuse to renew a charter school's charter based on any of the following:
 - a. One or more material violations of any of the conditions, standards or procedures contained in the written charter signed pursuant to section 1720-A.
 - b. 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 section 1716-A.

c. Failure to meet generally accepted standards of fiscal management or audit requirements.

d. Violation of provisions of the CSL.

e. Violation of any provision of law from which the charter school has not been exempted, including Federal laws and regulations governing children with disabilities.

f. The charter school has been convicted of fraud.

3. Because the statutory standards for review of the nonrenewal of a charter are the same as those for the review of charter denials, the CAB shall make a de novo review of the School District's determinations. *Compare* 24 P.S. § 17-1717-A(i)(6) *with* 24 P.S. § 17-1729-A(d); *West Chester Area School District v. Collegium Charter School*, 812 A.2d 1172, 1179 – 1180 (Pa. 2002).

4. When entertaining appeals from a district board's decision, the CAB shall give due consideration to the findings of the local board of school directors while making an independent determination as to the merits, and shall specifically articulate reasons for agreeing or disagreeing with the local school board. 24 P.S. § 17-1729-A(d); *West Chester Area School District, supra*, 812 A.2d at 1180.

5. The CSL requires any notice of nonrenewal of a charter given by the local board of school directors of a school district to state the grounds for such action with reasonable specificity and to give reasonable notice to the charter school of the date on which a public hearing concerning the nonrenewal will be held. 24 P.S. § 17-1729-A(c).

6. The School District complied with the procedural requirements of the CSL, as set forth at 24 P.S. § 17-1729-A(c), except as to five alleged violations of the CSL which were not raised in the Notice of Nonrenewal. Findings of Fact 14 – 16, 25 – 39, 42.

7. When a charter school submits an application to renew its charter, it is the charter school's burden of going forward to prove that it is entitled to have its charter renewed, including proving that its students obtained higher standardized test scores and improved in the quality of performance-based assessments; it is not the responsibility of the school district because the school district is not the entity seeking the renewal. *Ronald H. Brown Charter School v. Harrisburg City Sch. Dist.*, 928 A.2d 1145, 1152 n.10 (Pa. Cmwlth. 2007).

8. However, the local school board of directors is required to present evidence in support of the grounds for nonrenewal stated in its notice of nonrenewal and therefore has the burden of providing evidence sufficient to support those grounds. 24 P.S. § 17-1729-A(c).

9. The degree of proof required to establish a case before an administrative tribunal is the same degree of proof used in most civil proceedings, i.e., a preponderance of the evidence, while substantial evidence is an appellate standard of review, rather than a standard of evidence applied by a fact finder to determinations of whether or not a burden of proof has been satisfied. *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 601 – 602 (Pa. Cmwlth. 1990).

10. Once a charter is granted, the charter school is required to comply with the terms and conditions contained in the charter, as well as the school's charter application which is incorporated into its charter by operation of law. 24 P.S. § 17-1720-A(a); *In Re: Fell Charter School*, Docket No. CAB 2007-04 at 7.

11. A charter school cannot make unilateral changes to the charter agreement because unapproved changes run counter to the primary purpose of the charter agreement, and a charter school “must be true to its charter and the representations that caused the charter to be approved in the first instance.” *Graystone Academy Charter School v. Coatesville Area School District*, Docket No. 2012-01 at 35-37; *Fell Charter School, supra*, at 10; *In Re: Renaissance Academy of Pittsburgh Alternative of Hope (RAPAH) Charter School*, Docket No. CAB 2007-03 at 10.

12. A charter school’s board of trustees possesses the authority to decide matters related to the operation of the school, but that authority is subject to the school’s charter and changes to the charter are subject to the approval of the chartering school district. *West Chester Area School District, supra*, 812 A.2d at 1185; *Mosaica Academy Charter School v. Com., Dept. of Education*, 813 A.2d 813, 818 (Pa. 2002); *Montessori Regional Charter School v. Millcreek Township School District*, 55 A.2d 196, 200 (Pa. Cmwlth. 2012); *Northside, supra*, 50 A.3d 80; *RAPAH Charter School, supra*, Docket No. CAB 2007-03 at 10.

13. CCCHS committed one or more material violations of the conditions, standards or procedures contained in its charter and failed to be faithful to the terms of its charter when, without seeking approval from the School District to amend its charter, CCCHS deviated from or made changes to its charter, as follows:

a. It failed to meet its commitment to adhere to and prepare students to meet the standards of the Pittsburgh Public School District, the Commonwealth of Pennsylvania, and for comparative analysis on National norm-referenced assessments. Findings of Fact 163 – 226.

b. It failed to offer the promised choice between two alternative daily schedules. Findings of Fact 43 – 56.

c. It failed to adhere to the promised 47-week calendar.

Findings of Fact 57 – 68.

d. It failed to offer the promised interdisciplinary curriculum with the specific pairings set forth in the charter application. Findings of Fact 75 – 94.

e. It failed to offer valuable and meaningful learning experiences to all students through the use of the internship. Findings of Fact 95 – 146.

f. It failed to offer all of the courses promised in its application. Findings of Fact 147 – 161.

14. CCCHS failed to meet the requirements for student performance set forth in its own charter, which stated that the School has a “commitment to adhere to and prepare students to meet the standards of the Pittsburgh School District, the Commonwealth of Pennsylvania, and for comparative analysis on National norm-referenced assessments,” S.D. Exhibit 1a at 34, in that the School did not meet the requirements for student performance set forth in the regulations of the PDE when CCCHS failed to make AYP in the 2004 – 2005 through 2011 – 2012 school years and when, for the past seven consecutive school years, CCCHS has not met the state academic performance standard targets for all students or subgroups by directly meeting or exceeding the Pennsylvania targets, without the aid of Safe Harbor or Confidence Intervals. Findings of Fact 163 – 226.

15. In the aggregate, the promised items which CCCHS failed to provide to its students constituted a significant part of the charter school plan; so CCCHS’s failure to provide them, CCCHS’s failure to seek approval from the School District for amending the charter by

dropping them or replacing them with alternatives, and its failure to meet the requirements for student performance set forth in its own charter, in the form of its expressed “commitment to adhere to and prepare students to meet the standards of the Pittsburgh School District, the Commonwealth of Pennsylvania, and for comparative analysis on National norm-referenced assessments,” S.D. Exhibit 1a at 34, amount to multiple material violations of the conditions, standards or procedures contained in its charter, which justifies the nonrenewal of its charter. 24 P.S. § 17-1729-A(a)(1); *In Re: Ronald H. Brown Charter School*, Docket No. CAB 2005-08 at 25; *RAPAH Charter School, supra*, Docket No. CAB 2007-03 at 14.

16. CCCHS failed to meet the requirements for student performance set forth in the regulations of the PDE in that CCCHS did not make AYP in the 2004 – 2005 through 2011 – 2012 school years; and for the past seven consecutive school years CCCHS has not met the state academic performance standard targets for all students or subgroups by directly meeting or exceeding the Pennsylvania targets without the aid of Safe Harbor or Confidence Intervals. Findings of Fact 163 – 226.

17. CCCHS’s failure to meet the requirements for student performance set forth in the PDE’s regulations justifies the termination of its charter. 24 P.S. § 17-1729-A(a)(2); *Ronald H. Brown Charter School, supra*, 928 A.2d at 1153; *Renaissance Charter School, supra*, Docket No. CAB 2008 – 07 at 10.

18. The record in this appeal supports the nonrenewal of CCCHS’s charter under the CSL at section 1729-A(a)(1) and (2), 24 P.S. § 17-1729-A(a)(1) and (2). Conclusions of Law 1 – 17.

19. The evidence does not support a finding that CCCHS violated the CSL at section 1729-A(a)(3), (4) or (5), 24 P.S. § 17-1729-A(a)(3), (4), or (5).

DISCUSSION

I. STANDARD OF REVIEW/BURDEN OF PROOF

Pursuant to the CSL at section 1729-A(a), 24 P.S. § 17-1729-A(a), the local board of school directors may choose to revoke or not to renew a charter for any of 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) 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 section 1716-A.
- (3) Failure to meet generally accepted standards of fiscal management or audit requirements.
- (4) Violation of provisions of this article [Article XVII-A of the Public School Code of 1949].
- (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.

CSL at section 1729-A(a)(1) – (6), 24 P.S. § 17-1729-A(a)(1) – (6). Of these, the fifth⁷ and sixth reasons are not at issue because the School District alleged no facts in the Notice of Nonrenewal which would constitute a violation falling within those provisions. Moreover, subsection (6) was not even cited in the Notice of Nonrenewal.

The CAB applies a *de novo* standard of review when entertaining appeals from a School District's denial of a charter school application under section 1717-A(i)(6), 24 P.S. § 17-1717-

⁷ Other than in Conclusions of Law related to High Quality Teachers under the No Child Left Behind Law, which are rejected because of lack of prior notice, there are no factual findings or conclusions of law determining that CCCHS violated some other provision of law from which it has not been exempted. The lone Conclusion of Law (no. 279) states generally that CCCHS has not been faithful to applicable law, but nowhere else in the Adjudication is there any specification as the applicable law. Thus, CAB concludes that there is no evidence in the record to support nonrenewal based on a violation of the CSL at section 1729-A(a)(5). 24 P.S. § 17-1729-A(a)(5).

A(i)(6). *West Chester Area School District v. Collegium Charter School*, 812 A.2d 1172, 1180 (Pa. 2002). Since the standard of review for appeal of the nonrenewal of a charter school's charter is the same, *compare* section 1729-A(d), 24 P.S. § 17-1729-A(d), *with* section 1717-A(i)(6), 24 P.S. § 17-1717-A(i)(6), the review in this matter is also a *de novo* review. *See Thurgood Marshall Academy Charter School*, CAB Docket No. 2001-5 at 10 – 11. That means the CAB considers the findings of the School District, articulates its agreement or disagreement with those findings, and makes an independent determination as to the merits of the application. *West Chester Area School District, supra*, 812 A.2d at 1179 n.9, 1180.

In terms of which party has the burden of proof in a nonrenewal proceeding, the burden is initially on the charter school because it is seeking renewal. As the Commonwealth Court has ruled,

[when] a school submits an application to renew its charter, it is the school's burden of going forward to prove that it is entitled to have its charter renewed, including proving that its students obtained higher standardized test scores and they improved in the quality of performance-based assessments. It is not the responsibility of the school district because the school district is not the entity seeking the renewal.

Ronald H. Brown Charter School v. Harrisburg City Sch. Dist., 928 A.2d 1145, 1152 n.10 (Pa. Cmwlth. 2007). However, the CSL requires the local board of school directors to hold a hearing concerning any nonrenewal and the local board is further mandated to “present such evidence in support of the grounds for . . . nonrenewal stated in its notice.” Section 1729-A(c), 24 P.S. § 17-1729-A(c). Thus, while the charter school must submit an application to renew which demonstrates that it is entitled to renew, the school district bears the burden of proving any stated grounds for nonrenewal.

With regard to the degree of proof required to establish a case before an administrative tribunal, it is the same degree of proof used in most civil proceedings, i.e., a preponderance of

the evidence. *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). A preponderance of the evidence is the lowest degree of proof recognized in civil judicial proceedings, *Lansberry, supra*, 578 A.2d at 602, citing *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950), and is generally understood to mean that the evidence demonstrates a fact that is more likely to be true than not to be true, or if the burden were viewed as a balance scale, the evidence in support of the proponent's case must weigh slightly more than the opposing evidence. *Se-Ling Hosiery*, 70 A.2d at 856.

II. GROUNDS FOR NONRENEWAL

A. Grounds Stated In the Adjudication

Although the May 7, 2012 Notice of Nonrenewal, which the School District issued to initiate this proceeding, stated 23 specific paragraphs in support of nonrenewal, after the hearings, the Adjudication narrowed those down. In fact, the Conclusions of Law portion of the Adjudication set forth the following bases for determining that the charter of CCCHS should not be renewed:

1. Failure to comply with student performance standards set forth in Chapter 4 by failing to make AYP and failing to show sustained progress in improving student performance/student learning.

CR Tab O at Conclusions of Law 259 – 261.

2. Violating one or more of the material conditions of its charter by:
 - a. Failing to offer students a choice between two daily schedules;
 - b. Failing to offer a year-round calendar;
 - c. Failing to maintain adequate support as shown in decreasing enrollment numbers;
 - d. Failing to offer an interdisciplinary curriculum;
 - e. Failing to offer valuable and meaningful learning experiences through the use of the internship by all students;

- f. Failing to offer the courses promised in its application; and
- g. Failing to achieve 100% Highly Qualified Teachers.

CR Tab O at Conclusion of Law 265.

- 3. Violating generally accepted standards of fiscal management by:
 - a. Failing to fund its budgetary reserve; and
 - b. Pre-paying its lease with the Boys & girls Club.

CR Tab O at Conclusions of Law 270 – 271.

- 4. Violating a provision of the Charter School Law by violating public school facility regulations pertaining to the health and safety of pupils, as noted in the facilities inspection report.

CR Tab O at Conclusion of Law 273.

- 5. Violating the No Child Left Behind Act by failing to meet its requirements pertaining to Highly Qualified Teachers.

CR Tab O at Conclusions of Law 277.

- 6. CCCHS . . . is not meeting the goals and standards identified in its charter, and has not been faithful to the terms of its charter and applicable law.

CR Tab O at Conclusion of Law 279.

These grounds fall under five of the six enumerated grounds for revocation or nonrenewal of a charter found in the CSL at section 1729-A(a).

B. Grounds Not Set Forth In the Notice of Nonrenewal But Stated in the Adjudication

In addition to the grounds for nonrenewal listed in the Notice of Nonrenewal, the Adjudication contains either findings of fact or conclusions of law, or both, stating grounds for nonrenewal which were *not* originally set forth in the Notice of Nonrenewal. Those include the following:

- 1. Findings of fact pertaining to CCCHS's termination of a management services contract with Academic Leadership Services ("ALS"). CR Tab O (Adjudication, Findings of Fact 211 – 217).

2. Findings of Fact pertaining to CCCHS's modification of its curriculum by beginning to use the Understanding by Design ("UBD") curriculum. CR Tab O (Adjudication, Findings of Fact 196 – 197).
3. A Conclusion of Law stating that CCCHS does not have a high quality educational program. CR Tab O (Adjudication, Conclusion of Law 279).

Since the School District's Notice of Nonrenewal did not mention these items, it did not state them as grounds for nonrenewal at all, let alone with reasonable specificity, as required in the CSL at section 1729-A(c), 24 P.S. § 17-1729-A(c). Thus, CCCHS was not provided with prior notice that those items would be at issue; and with regard to those items, we conclude that the School District did not comply with the notice requirements of the CSL.

Lack of notice is a due process issue, and "[d]ue process requirements are fully applicable to adjudicative hearings involving substantial property rights before administrative tribunals." *Lewis v. School District of Philadelphia*, 690 A.2d 814, 816 – 817 (Pa. Cmwlth. 1997), quoting *Soja v. Pennsylvania State Police*, 455 A.2d 613, 614 (Pa. 1982). The essential elements of due process are notice and opportunity to be heard and to defend oneself. *Lewis, supra*, 690 A.2d at 816 – 817. Furthermore, notice must be given in a manner which is reasonably calculated to give a party an opportunity to prepare its defense. *State Dental Council & Examining Board v. Pollock*, 318 A.2d 910, 915 (Pa. 1974).

Pittsburgh makes several arguments in an attempt to justify the inclusion of these additional grounds in the Adjudication despite the lack of notice. First, Pittsburgh argues that these items are simply an "amplification" of the general grounds for nonrenewal set forth in the Notice of Nonrenewal. However, stating the grounds for nonrenewal generally in the Notice gives the charter school only the vaguest idea of what it may be required to defend against at the

hearing. Therefore, citing to those broad, general provisions of the CSL, without more, is not sufficient notice to CCCHS, as to these issues, to comport with the requirements of due process.

Second, Pittsburgh argues that there is nothing in the Local Agency Law or section 1729-A of the CSL, 24 P.S. § 17-1729-A, that prevents consideration of additional violations that come to light during the course of the hearings; nor can the School District be expected simply to ignore such information. While it may be true that neither the Local Agency Law nor the CSL prevents the consideration of additional violations uncovered during a hearing, due process, as explained above, *does* prevent it *when there is no notice given*, such as by way of an amended Notice. In this case, Pittsburgh did *not*, in fact, amend the pleadings to conform to the evidence; and it was not clear on the record during the course of the hearing that Pittsburgh intended to pursue the above-enumerated additional grounds as part of its case against CCCHS. Therefore, CCCHS was not given notice that it would have to defend against these additional grounds and did not have the opportunity to adequately prepare to address the issues.

Because CCCHS had a property right in its charter (*Montessori Regional Charter School v. Millcreek Township School District*, 55 A.3d 196, 201 (Pa. Cmwlth. 2012), *citing Philadelphia Entertainment and Development Partners, L.P. v. Pennsylvania Gaming Control Board*, 941 A.2d 108, 115 (Pa. Cmwlth. 2011), it follows that Pittsburgh was required to comply with procedural due process safeguards so as to avoid taking CCCHS's property without due process. *Lewis*, 690 A.2d at 817; *see also In Re: Creative Educational Concepts Charter School*, CAB 1999-15 at 6. Accordingly, those grounds which were not stated in the Notice of Nonrenewal

cannot serve as the basis for nonrenewal of CCCHS's charter and will not be entertained by CAB.⁸

C. Grounds For Nonrenewal In Notice of Nonrenewal

- 1. Material Violations of Charter/Failure to Be Faithful to the Terms of the Charter (Conclusions of Law 265 (a) – (f) and 279).**
 - a. Failure to offer students a choice between two daily schedules (Conclusion of Law 265(a) and 279⁹).**
 - b. Failure to offer a year-round calendar (Conclusion of Law 265(b) and 279).**

Conclusion of Law 265(a) found that CCCHS violated a material condition of its charter when it failed to offer students the choice between two daily schedules. The evidence on this issue demonstrated the following: CCCHS's charter application stated that the school would offer two alternative daily instructional schedules, the first in which the school day would last from 8:15 a.m. to 2:15 p.m., and the second in which the school day would last from 10:45 a.m. to 4:45 p.m. S.D. Exhibit 1a at 28; NT I at 71. The charter application extolled that choice of schedule as something that would enable the School to better address problems some students might face related to transportation, child care or employment; and that the choice in schedules would better position the school to develop job shadowing, mentoring and internship

⁸ In its Brief, Pittsburgh argued yet another additional ground of which CCCHS was not given notice in the Notice of Nonrenewal, asserting that by offering dual enrollment, CCCHS is in violation of section 1714-A(a)(4) of the CSL, 24 P.S. § 17-1714-A(a)(4). Brief for Respondent at 47. Because this is another instance of lack of notice to CCCHS of the allegations against which it must defend, it cannot be considered without violating CCCHS's due process rights and will also not be entertained by CAB.

⁹ Since Conclusion of Law 279 includes the general determination that CCCHS has not been faithful to the terms of its charter, which is essentially the same conclusion as found in Conclusion of Law 265, there will be no separate discussion of Conclusion of Law 279. All of the discussion pertaining to Conclusion of Law 265 and its subparts is applicable to Conclusion of Law 279.

opportunities. S.D. Exhibit 1a at 28. Also, in the charter application, CCCHS characterized the two alternative daily instructional schedules as one of “several innovations that, it is believed, will enhance the educational program.” S.D. Exhibit 1a at 28.

Furthermore, CCCHS in its charter application promoted the two alternative daily instructional schedules, which it termed the “flexible daily schedule,” as a way in which the proposed charter school could serve as a model for other public schools in the School District. S.D. Exhibit 1a at 30. In that regard, the School District’s original charter application Review Team agreed, specifically noting this innovative flexible daily schedule in its recommendation to approve the school. S.D. Exhibit 1b at 4.

From the start, CCCHS has not lived up to its charter application promise with regard to the flexible daily schedule. While CCCHS utilized two alternative instructional daily schedules through the 2004 – 2005 school year, CCCHS Exhibit 14; NT at 266 – 267, those two alternative daily schedules were from 8:15 to 2:19 for 9th graders and from 7:45 to 1:49 for the remainder of the student body; and the students did not have a choice between the two schedules. CCCHS Exhibit 14; NT II at 288. Moreover, CCCHS utilized those two alternative daily schedules in order to maintain the younger students on a separate schedule from the older students in order to avoid negative influences on the younger students from the older students, rather than for the reasons that had been set forth in the charter application. S.D. Exhibit 1a at 28; NT II at 267, 288.

CCCHS stopped utilizing the two alternative daily schedules after the 2004 – 2005 school year because the staff had no problems or concerns about a negative influence from the upper grades on the 9th graders and because the two alternative daily schedules created transportation issues related to feeder districts’ having to transport two sets of students to CCCHS at two

different times. CCCHS Exhibit 15; NT II at 267 – 268. And now, CCCHS does not maintain two alternative daily schedules. CCCHS Exhibit 14; NT I at 71; NT II at 268 – 269.

The revised daily schedule, without alternatives, was included in CCCHS's 2005 – 2006 Annual Report and submitted to the PDE and Pittsburgh in August 2006. CCCHS Exhibit 15. Also, CCCHS had been operating under the revised daily schedule for two years when Pittsburgh renewed its charter in 2007. NT II at 271. However, there is no evidence in the record to demonstrate the CCCHS ever sought the approval of Pittsburgh for the change to CCCHS's daily schedule or that CCCHS sought the permission of Pittsburgh for the amendment of CCCHS's charter as to its daily schedule. Therefore, the evidence supports Conclusions of Law 265(a) and 279, in that CCCHS has not been faithful to the terms of its charter and has violated its charter by failing to utilize the alternative daily schedule proposed in its charter application. CAB adopts those findings and also concludes that the charter school deviated from its charter without the approval of Pittsburgh.

Conclusion of Law 265(b) is similar in that it determined that CCCHS violated a material condition of its charter when it failed to offer a year-round schedule. CCCHS's charter application stated that it would offer a "second innovation" by dividing the school year into two semesters of three terms each to create a 47-week school year. S.D. Exhibit 1a at 28. The charter application further stated that the school's instructional year would be organized into two semesters, each comprised of three terms, for a 190-day school year. S.D. Exhibit 1a at 28; NT II at 271 – 272.

As it had done with regard to the flexible daily schedule, CCCHS promoted the 47-week calendar as a way in which the proposed charter school could serve as a model for other public schools in the School District. S.D. Exhibit 1a at 30. Additionally, the School District's original

charter application Review Team specifically noted this innovative 47-week calendar in its recommendation to approve the school. S.D. Exhibit 1b at 4.

However, at some point,¹⁰ after “the initial years of operation,” NT II at 272, CCCHS adopted a traditional two-semester, four-term calendar. NT II at 272. CCCHS did so for instructional and administrative reasons including: (a) the alignment of credits for transferring and dual enrollment students; (b) the reduction of poor attendance on days when Pittsburgh was not in session, but CCCHS was in session; and (c) the avoidance of academic and behavioral regression that occurred due to the multiple breaks inherent in the tri-term semester schedule. NT II at 271 – 275.

Although the CCCHS calendar for the forthcoming school year is forwarded to Pittsburgh in June every year, the calendar is included in each annual report submitted by CCCHS to the PDE and Pittsburgh, and the calendar is provided annually to the Pittsburgh Review Team, NT II at 275, 302 – 303, 303 – 304, there is no evidence in the record to demonstrate that CCCHS ever actually sought the approval of Pittsburgh for the change to CCCHS’s school calendar or that CCCHS sought the permission of Pittsburgh for the amendment of CCCHS’s charter as to its school calendar. Therefore, the evidence supports Conclusions of Law 265(b) and 279 in that CCCHS has not been faithful to the terms of its charter and has violated its charter by failing to utilize the 47-week school year calendar proposed in its charter application.

As to the facts underlying Conclusions of Law 265(a) and (b), there really is no dispute. Indeed, CCCHS’s own witnesses were the source of testimony indicating that CCCHS had never utilized an alternative daily schedule as proposed in its charter application; that in the 2005 –

¹⁰It is not clear from the record when this occurred. Although proposed findings of fact in the record state that the change occurred in 2008, those findings cite to NT II at 271 – 275; but nowhere does the year 2008 appear in the testimony found at those pages.

2006 school year, CCCHS stopped using the other alternative daily schedule, separating 9th graders from the 10th through 12 graders, which it *had* been utilizing; and that CCCHS stopped using the 47-week school year at some point. The dispute, in the face of these two violations, is whether these are *material* violations of CCCHS's charter or not; it is their materiality which CCCHS contests, not the fact that they occurred. The question of materiality will be addressed subsequently.

c. Failure to maintain adequate support as shown in the decreasing enrollment numbers (Conclusions of Law 265(c) and 279).

Conclusion of Law 265(c) determined that CCCHS violated a material condition of its charter when it failed to maintain adequate support as shown in the decreasing enrollment numbers at the school. This Conclusion of Law relates to the Notice of Nonrenewal which stated: "The minimum enrollment in the application is 280 students, and the current enrollment is 238 students with no waiting list. CR Tab E at page 2. It is not immediately clear why this is either a deficiency or an alleged ground for nonrenewal. However, the School District argues in its Brief that the decline in enrollment and lack of demand for CCCHS's offerings evidence an unsuccessful program, and that Pittsburgh granted the CCCHS charter with the condition and expectation that 280 students would be enrolled at CCCHS; so its failure to live up to that condition is a material violation of the charter. Brief for Respondent at 44.

The evidence indicates that CCCHS proposed in its charter application to educate a maximum of 360 students in grades 9 through 12. S.D. Exhibit 1a at 9. Additionally, CCCHS estimated in its application that in order to maintain financial viability, it would need to enroll 280 students in years four and five; it did not estimate the number of enrollees it would require thereafter to remain financially viable. S.D. Exhibit 1a at 35. The evidence also indicates that

enrollment at CCCHS has vacillated over the past six years or so, and in general has declined; so CCCHS has not needed to maintain an admission wait list or conduct an admission lottery over the last five years due to low application numbers. CCCHS Exhibit 19; S.D. Exhibits 6d, 7b and 7c; NT III at 141, 142.

However, there is no evidence to indicate that CCCHS established a minimum enrollment requirement anywhere in its charter application or that Pittsburgh, in granting the charter, required CCCHS to adhere to a minimum enrollment. Rather, CCCHS proposed a maximum capacity (360) and a minimum number of students needed four and five years out for financial viability (280); but CCCHS never promised that it would educate a minimum number of students each year. Indeed, it is unreasonable to hold CCCHS to a minimum enrollment number based solely on projections as to financial viability made 15 years ago in 1998. Operational costs inevitably change, especially over 15 years; so the number of students required for financial viability after the fourth and fifth years of the School's operation could change as well. In short, these numbers were not a promise in the charter; rather, they were merely a statement of the program's predicted financial viability and ultimate capacity. To read that financial viability number, 15 years later, as a statement or establishment of a minimum enrollment requirement is simply inequitable.

Also, while it is certainly true that parents who are dissatisfied with the School can demonstrate their preferences with their feet by walking out the door, NT III at 122, there is simply no evidence in the record to support drawing the conclusion that the decline in enrollment at CCCHS is based on parental dissatisfaction or lack of support for the school. There could be any number of other reasons. Moreover no evidence was produced to support this conclusion, and no parents testified that they withdrew their children because they were unhappy with the

School's performance. To extrapolate a specific reason for the decline simply from the fact of the decline is specious. Accordingly, there is no support in the record for concluding that the decline in enrollment constitutes a material violation of the School's charter; and thus this basis for nonrenewal is rejected.

d. Failure to offer an interdisciplinary curriculum (Conclusions of Law 265(d) and 279).

Pittsburgh found that CCCHS violated a material condition of its charter because it failed to offer an interdisciplinary curriculum. The evidence on this issue demonstrated the following: In its initial charter application, CCCHS proposed to take a "systematic approach to education in which course offerings will be geared primarily toward School-to-Work." S.D. Exhibit 1a at 12. CCCHS's charter application also stated that: "[t]he curriculum will be comprised of [sic] courses that will use an interdisciplinary or integrated approach to classroom instruction with 'applied' learning experiences for students." S.D. Exhibit 1a at 16. Moreover, the School District's initial Review Team noted that the charter of CCCHS would provide expanded educational opportunities within the school system because "the primary focus of the school will be geared towards school-to-career using an applied, integrated and interdisciplinary curriculum beginning in ninth grade." S.D. Exhibit 1b at 1.

According to its charter application, CCCHS proposed to have an interdisciplinary approach to language arts and social studies, mathematics and the sciences, and life skills and humanities. S.D. Exhibit 1a at 17, 19, 22. Throughout its charter application, as well as in a subsequent statement of mission in its charter annual report to the PDE, CCCHS has emphasized that its curriculum is "interdisciplinary." S.D. Exhibit 1a at 16 – 23; S.D. Exhibit 7c at Section I (Mission); NT I at 144. Additionally, in its charter application, CCCHS stated that the rationale

for the interdisciplinary approach lies in the fact that connections can be logically built between reading and writing and new and old knowledge with real world/life themes. S.D. Exhibit 1a at 17.

The Pittsburgh Review Team, in looking for an interdisciplinary approach, did not see connections being logically built across subject areas or utilizing real world and life themes (NT I at 194 – 195); nor did the Team note any interdisciplinary approaches to the curriculum in reviewing separate curriculum areas. NT I at 194, NT I at 197 – 198.

CCCHS's position is that it provides common planning time for teachers to support interdisciplinary activities. NT II at 173. Additionally, CCCHS's teaching staff creates lesson plans and interdisciplinary units. NT II at 50, 141. CCCHS teachers in one department also coordinate certain lessons with teachers in other departments. NT I at 268 – 270. By way of general example, CCCHS's interdisciplinary activities might include the coordinating of English and Social Studies content focused on community and how a society socializes children by choosing novels to read that illustrate such concepts and weaving careers and content about careers into every subject area. *Id.* More specific examples of how teachers at CCCHS regularly implement interdisciplinary activities include the following:

- A unit combined the study of careers, English, Social Studies and Economics by studying *Nickel and Dimed*. NT II at 36.
- An Ancient Greece unit required students to read Greek mythology in English class and research Greek culture in History class with multiple components of reading, writing and research. CCCHS Exhibit 48; NT II at 137 – 138.

- An acid rain unit involved Chemistry labs and English technical writing lessons. CCCHS Exhibit 48; NT II at 139.
- A Healthy Living unit incorporated Careers, Computers, Civics, Algebra, Earth and Space Science, English, and Physical Education topics. CCCHS Exhibit 48; NT II at 137 – 142.

The seniors' graduation project is also interdisciplinary because the students must analyze data from various sources, delve into the history of a career, write, research, present, and pull their internship experience into the final project. NT I at 270 – 271. The senior project, among other things, incorporates topics across Marketing, e.g., how to present an idea persuasively, and English, e.g., research and writing to effectively present ideas. CCCHS Exhibit 48; NT II at 138 – 139. Also, discussion of careers occurs across all classes; so the School's career focus is interdisciplinary. NT II at 36, 167.

The evidence summarized above supports the conclusion that the teachers and staff at CCCHS implement interdisciplinary *activities*; but the evidence is insufficient to support the conclusion that CCCHS has the interdisciplinary *curriculum* promised in its charter application. CCCHS teachers may coordinate certain lessons, NT II at 268 – 270, but that is not the same thing as implementing an interdisciplinary curriculum. Indeed, while a CCCHS witness testified that these types of cross-curricular projects are indicative of the interdisciplinary curriculum at CCCHS, NT II at 276, a Pittsburgh witness testified that an interdisciplinary curriculum is not the same thing as cross-curricular projects; and the latter is not necessarily indicative of the former. NT I at 89. Accordingly, there is insufficient evidence in the record to support a finding that CCCHS has implemented a consistent, planned coordination of curriculum in the paired subject areas, as promised in the charter application. These paired subject areas included

Language Arts and Social Studies, Mathematics and Science, and Life Skills and Humanities. However the record shows very few instances of such pairing

In light of the lack of evidence supporting the implementation of a consistent interdisciplinary curriculum with the promised subject area linkages, the record supports the conclusion that CCCHS has committed a material violation of its charter because it does not provide an interdisciplinary curriculum but rather only provides interdisciplinary activities. Therefore, CAB finds that the charter has been violated constituting a material violation of the charter.

e. Failure to offer valuable and meaningful learning experiences to all students through the use of the internship (Conclusions of Law 265(e) and 279).

Pittsburgh also found that CCCHS violated a material condition of its charter because it failed to offer valuable and meaningful learning experiences to all students through the use of the internship. The evidence in the record demonstrates the following with regard to the CCCHS internship program:

In its charter application, CCCHS stated that “[c]ollaboratives with business and industry within the District and region will present students with opportunities to investigate and prepare for job entry in one of the three primary areas of health care & services, manufacturing, and business services,” S.D. Exhibit 1a at 25; that its primary focus “will be on School-to-Work,” Exhibit 1a at 23; and that one of the three core elements of School-to-Work (“STW”) is work-based learning, which includes career exploration, work experience, and structured training and mentoring at job sites. S.D. Exhibit 1a at 24. CCCHS also emphasized “its mission to incorporate “real world-of-work” experiences in to the curriculum.” *Id.*

As part of work-based learning, CCCHS stated in its charter application that its program will provide students with work-based learning opportunities through a number of different avenues including internships, part-time jobs, co-ops and apprenticeships; that students would select a “career cluster” which will determine placement into various experiential learning activities; and that students would possibly be able to do “concurrent enrollment in local trade or vocational schools as their career interests, goals, progress and performance are more clearly defined.” S.D. Exhibit 1a at 25. Most recently stated in its 2010 – 2011 Annual Report, the CCCHS mission is to provide “small classes, an interdisciplinary curriculum, innovative teaching techniques **and an internship component**, [so that] our students will be prepared to make informed vocational choices. S.D. Exhibit 7c (emphasis added). Moreover, the School District’s Review Team cited CCCHS’s school-to-career emphasis, beginning at grade 9, as a clear alternative to current Pittsburgh programming, and as one of the reasons the Review Team recommended the approval of CCCHS’s charter application. S.D. Exhibit 1b at 9.

In reality, however, the CCCHS internship program works differently. In order to graduate, each senior must successfully participate in either an internship at a local business or dual enrollment at a local college or at the Community College of Allegheny County (“CCAC”). NT I at 242; NT III at 6, 55 – 56. The CCCHS internship component is not universal, despite its inclusion in the Mission Statement, because students participating in dual enrollment at the CCAC are exempted from the internship requirement. NT III at 56.

During 9th through 12th grade, every CCCHS student is enrolled in career classes in which students learn various career skills and explore career opportunities, through projects, presentations and activities. CCCHS Exhibit 27; NT II at 262 – 264. Instruction in career skills and career awareness is also infused into classes in other subject areas. CCCHS Exhibits 27 and

49; NT II at 264. The CCCHS educational program also includes classes and activities to provide students with insight on careers in health care and services, manufacturing, business services, and other vocational areas. CCCHS Exhibit 23; NT II at 258 – 266.

As part of the CCCHS Career Classes, each student develops a career portfolio that includes skills assessments, vocational interest inventories, vocational aptitude assessments, internship or dual enrollment journals, weekly internship/dual enrollment reviews and other career-related material; and the student maintains and supplements the career portfolio throughout his or her time at CCCHS. NT III at 8. The process of selecting an internship begins in 9th grade, through careers classes and other activities and continues until 11th grade, when each student chooses either an internship or dual enrollment placement for 12th grade. CCCHS Exhibit 29; NT III at 6 – 8. Students and staff use the data and information in each student's career portfolio to identify appropriate career paths, internship opportunities, and dual enrollment selections. NT III at 6 – 15.

While there are no internship sites which CCCHS includes in its list of business partners that are obviously (based on the name) related to manufacturing, the listed internship sites do include apparently (based on the name) health-related sites such as the American Red Cross, CCAC Center for Health Careers, the Jewish Healthcare Foundation, CVS Pharmacy, VCA Fox Chapel Animal Hospital, UPMC (St. Margaret's Hospital), Dr. Petraglia Dentist Office, West Penn Hospital, Addison Behavioral Care, and Rite Aid, as well as a multitude of internship sites which CCCHS includes in its list of business partners that appear to be business service-related. CCCHS Exhibit 35. Regarding dual enrollment, students take two college classes in the fall and two in the spring; and in so doing, CCCHS allows them to earn successful completion of the internship program in place of completing an internship. NT III at 56.

Students in the 12th grade spend three of the five school days a week either at the internship site or in the dual enrollment program. CCCHS Exhibit 28; NT III at 6, 19. CCCHS students in the dual enrollment program attend career classes two days per week and are assigned a staff member to serve as a mentor. NT I at 242; NT III at 49. Similarly, each CCCHS senior intern is assigned a CCCHS staff member as a mentor. NT I at 234 – 36. The mentors work with each senior on a twice-weekly basis to discuss problems, questions and other issues regarding his or her internship or dual enrollment experience. *Id.* CCCHS teachers and staff provide ongoing support to interns, helping them problem-solve any conflicts or other issues that arise at the internship site. CCCHS Exhibits 30 and 33; NT I at 232 – 233; NT III at 20, 38 – 39. Similarly, CCCHS teachers and staff help dual enrollment students through the process and sometimes with the struggle, of adapting to a college environment. NT I at 242 – 243. Senior interns attend CCCHS Careers Classes during which teachers reinforce and build upon the skills students are gaining through the senior internship. CCCHS Exhibit 27. CCCHS dual enrollment students receive the same level of faculty support as students participating in internships. NT III at 49.

Students are permitted to utilize their preexisting part-time jobs as their internships but are expected to explore other options as well in order to find the best individual fit. NT III at 69. The CCCHS students who have secured internships for pay are only allowed to do so based on family hardship, when participation in an unpaid internship will cause the student to lose a paying job. NT III at 31 – 32. While some CCCHS students have secured internships for pay at preexisting work locations, only a small percentage of students do so each year. CCCHS Exhibit 38; NT III at 31 – 32. For some CCCHS students an internship at a restaurant, fast-food establishment, or other retail environment is valuable, based on the student's academic ability,

maturity level, and previous job experience. NT I at 249 – 254; NT III at 33 – 39. CCCHS students who intern at preexisting jobs are subject to the same academic requirements as any other student in the internship program, NT III at 32 – 34; and a job site which sponsors a previous employee as an intern is subject to the same reporting requirements as any other internship site. NT III at 32 – 34.

Internship students are expected to report to work on a timely, regular and reliable basis, regardless of where the internship site is; learn to work with supervisors, coworkers and, in some locations, customers; abide by safety and health regulations; engage in problem-solving and critical thinking; and develop “soft skills,” which are those types of professional attributes that are required in the work world. NT I at 250 – 252, 253, 254. “Soft skills” are employability and job-readiness skills, including proper communication, responsibility, being on time, being able to work with a team, and engaging in proper problem-solving. NT II at 254. Internships at work sites provide students with an outside-of-the-classroom environment that cannot be recreated in a classroom. NT I at 246.

CCCHS implements no pre- or post-internship assessments. NT III at 59 – 61. There is no regularly-occurring academic component to a CCCHS internship; concepts that the students are learning in their academic classes are passed along to the internship site supervisors only on an as-needed basis. NT III at 64. Completion of either the internship or the dual enrollment program is the culmination of the various career-focused instructional programs which all CCCHS students experience throughout their time at the school and which are infused throughout the school’s curriculum. CCCHS Exhibit 23; NT II at 253 – 266; NT III at 6 – 8.

CCCHS maintains a curriculum for the senior internship and dual enrollment programs which describes the operation of the internships and the broad goals and objectives. CCCHS

Exhibit 28; NT I at 245; NT III at 77. The CCCHS curriculum for the senior internship and dual enrollment programs does not include any content, activities, or interdisciplinary linkages; nor does it mention dual enrollment except in the title on the first page and under Program Objectives where Program Objective 1 states that “All students will be involved in the CCCHS Senior Internship or Dual Enrollment Programs following individual student interviews at respective sites.” CCCHS Exhibit 28. The curriculum document for the 12th grade internship was not presented to the Review Team at the site visit by Mr. Ferguson; nor did Mr. Ferguson tell the Review Team that materials concerning the internship were available in the conference room. CCCHS Exhibit 28; NT III at 52, 57, 84.

Pittsburgh argues that the internships offered to students at CCCHS do not offer them opportunities to investigate and prepare for job entry in one of the three primary areas of health care and services, manufacturing, and business services, the areas which the charter application indicated were the focus of the internship program. Brief for Respondent at 47. However, the facts indicate that while there are no internship sites included by CCCHS in its list of business partners that are obviously (based on the name) related to manufacturing, the listed internship sites do apparently (based on the name) include health-related sites such as the American Red Cross, CCAC Center for Health Careers, the Jewish Healthcare Foundation, CVS Pharmacy, VCA Fox Chapel Animal Hospital, UPMC (St. Margaret’s Hospital), Dr. Petraglia Dentist Office, West Penn Hospital, Addison Behavioral Care, and Rite Aid, as well as a multitude of internship sites which CCCHS includes in its list of business partners that appear to be business service-related. CCCHS Exhibit 35.

Since there is no definition of “business services” in the charter application or elsewhere in the record, any site which is a business would appear to fall within that category; and all of the

sites appear to be businesses of one variety or another. A fast food restaurant is certainly a business that is providing a service, just as a construction company or a printing company is a business providing a service. And there are business owners, managers and supervisors in fast food, people who make a career of running the food service business, just as there are business owners, managers and supervisors at construction companies and printing companies who make careers of running those businesses. From that standpoint, there is insufficient evidence to support a finding that the CCCHS internship program does not offer students opportunities to investigate and prepare for job entry in one of the three primary areas of health care and services, manufacturing, and business services, the areas which the charter application indicated were the focus of the internship program.

Of greater concern is the fact that, during the course of the hearing, CCCHS emphasized that its internship students develop very valuable “soft skills” through participation in their internships. CCCHS reiterated that these skills are what make students employable and prepare them for holding jobs. Along with this emphasis, CCCHS promoted the fact that internships at work sites provide students with an outside-of-the-classroom environment that cannot be recreated in a classroom. These positives are consistent with CCCHS’s statements, in its original charter application, about the value of work-based learning and the concomitant value of the internship component of CCCHS’s program.

The problem here is that CCCHS does not require the internship component of all of its students, because it exempts those students who participate in dual enrollment. In so doing, however, CCCHS deprives those students of the value of work-based learning, the opportunity to develop those very valuable soft skills, and the opportunity to learn in an outside-of-the-classroom environment that cannot be recreated in a classroom. In short, CCCHS has failed to

offer valuable and meaningful learning experiences to *all* of its students through the use of the internship because it exempts some of them from the experience. There was no explanation of why CCCHS does not allow dual enrollment students to participate in the internship as well as in the dual enrollment program, rather than as a substitute for it. Certainly dual enrollment classes could be taken in place of other academic classes, as Pittsburgh suggests, rather than in place of the internship, so that dual enrollment students could also have the benefit of the learning experiences provided by the internship.

CCCHS tries to justify the exemption by pointing out that dual enrollment students must learn to adapt to a new and different learning environment with many students, very different interactions with the teacher or professor, students of varying ages, and a challenging problem-solving environment, NT I at 242 – 243; and that the dual enrollment experience relates to job-readiness or the potential career from the standpoint that some students want to pursue careers that require a college degree and dual enrollment prepares them to be successful in a college environment. NT I at 244. However, while these things are no doubt true, they do not seem to be an adequate substitute for the soft skills – so highly praised by CCCHS – that students develop while working at an internship.

The experience gained from dual enrollment does not parallel the experience gained from an internship, as CCCHS presents it; dual enrollment seems a poor substitute in comparison. Indeed, if those internship-developed soft skills are truly valuable because they create an employable, job-ready individual, the skills must therefore be valuable in assisting a college-bound student who may have to hold a part time job in order to make it through college to succeed in the working world during or beyond college. There is no good reason to allow college-bound students to be exempt from learning those skills. They will be out in the working

world eventually as well; so the sooner the skills are learned, the better off the college-bound student will be.

The CCCHS charter promised that, as part of work-based learning, its program will provide students with work-based learning opportunities through a number of different avenues including internships, part-time jobs, coops and apprenticeships. S.D. Exhibit 1a at 25. Furthermore, CCCHS established that its mission for School-to-Work initiatives would involve work-site learning and learning through working experience. S.D. Exhibit 1a at 26. Therefore, the evidence supports the conclusion that CCCHS has failed to offer valuable and meaningful learning experiences to **all** of its students through the use of the internship.

f. Failure to offer the courses promised in the application (Conclusions of Law 265(f) and 279).

Another violation of a material condition of CCCHS charter concerns the failure to offer the courses promised in the original charter application. The original CCCHS charter application included a listing and description of the school's proposed course offerings. S.D. Exhibit 1b, Appendix B; NT I at 72.

CAB has compared this listing to CCCHS current course list and has found several courses to be missing. First, CCCHS does not offer courses entitled Cooperative Education, Career Cluster, Life Skills I, Life Skills II, Consumer Economics, Cultural Geography, Introduction to Computer Programming, Humanities I, and Humanities II. S.D. Exhibit 7a; CCCHS Exhibits 9 and 10; NT I at 73. If one looks beyond the course title to the content, then the content of some of these courses continues to be provided but under another course title. For example, the internship at CCCHS currently falls under two courses entitled "Education – Workplace Experience" and "Job Corps/Internship" which correlate to the "Cooperative

Education” and “Career Internship” courses promised in the original charter application. NT II at 250 – 251. However, CCCHS has no Consumer Economics course, NT II at 284; nor does CCCHS have a Humanities 1 or Humanities 2 course, or any equivalent that focuses on all of the components of those courses listed in the original charter application. *Id.*

The above discussion supports the conclusion that CCCHS failed to offer the courses promised in the original charter application because it offers no Consumer Economics course, NT II at 284; nor does it offer a Humanities 1 or Humanities 2 course or any equivalent that focuses on all of the things listed in the original charter application under those course titles. *Id.* Accordingly, CCCHS violated its charter by failing to offer those courses.

2. **Materiality of Violations of the School’s Charter**

With regard to the violations of the terms of CCCHS’s charter found to be supported in the discussion above, the remaining question is whether the violations are material. The CAB has ruled that a charter school’s failure to follow through and offer the extended school year, educational programs and activities promised in its charter school application constitutes a “material violation” of the School’s charter under the CSL at section 1729-A(a)(1), 24 P.S. § 17-1729-A(a)(1), which is sufficient grounds to terminate the charter. *Thurgood Marshall Academy Charter School, supra*, Docket No. CAB 2001-5 at 12, 13.

The CAB also has stated that a charter school cannot make unilateral changes to its charter agreement, because unapproved changes run counter to the primary purpose of the charter agreement; so the only way to modify a charter agreement is to request an amendment. *In Re: Renaissance Academy of Pittsburgh Alternative of Hope (RAPAH) Charter School*, Docket No. CAB 2007-03 at 10. And the Commonwealth Court’s decision in *Northside Urban Pathways Charter School v. State Charter School Appeal Board*, 50 A.3d 80 (Pa. Cmwlth.

2012), further supports these rulings by the CAB in that the Commonwealth Court determined that if a charter school changes a term of its charter without amending its charter, the school is subject to closure under the CSL at section 1729-A(a)(1), 24 P.S. § 17-1729-A(a)(1). *Northside, supra*, 50 A3d at 86.

With regard to the alternative daily schedule and the 47-week calendar, CCCHS argues, essentially, that these changes were not material because Pittsburgh allegedly had notice of the changes but never raised the changes as issues or problems, and because CCCHS made the changes in order to address problems that had arisen in the application of the alternative daily schedule and the 47-week school calendar. The counterargument is that because CCCHS touted these two promises as innovative and a basis for its serving as a model for other schools, and because the original School District Review Team specifically referred to these things as innovative in the recommendation to approve the charter, these items clearly were material. For that reason, the argument continues, the absence of these promised aspects of CCCHS's program means that CCCHS is no longer innovative or a model for other schools, thus warranting the nonrenewal of its charter. Pittsburgh also argues that CCCHS has not been true to its charter because it has failed to provide these things and to obtain the School District's approval of amendments to CCCHS's charter when CCCHS made the changes at issue, which further justifies the nonrenewal of its charter.

The counterargument is persuasive. In *Thurgood Marshall Academy Charter School, supra*, the CAB determined that the length of the school year is clearly material to the educational program provided to students, especially when a charter school proposed to provide an extended school year. *Id.* at 13. This is not to say that CCCHS could not modify these things, but it had to do so by requesting approval of a change to its charter by Pittsburgh. *Northside,*

supra. Accordingly, the alternative daily schedule and the 47-week calendar are clearly material, and the failure to provide them serves as grounds for nonrenewal under the CSL at section 1729-A(a)(1), 24 P.S. § 17-1729-A(a)(1).

CCCHS's failure to implement the promised interdisciplinary curriculum is an additional instance of the charter school's failure to follow through and offer the educational program promised in its charter school application. That failure constitutes another "material violation" of the School's charter under the CSL at section 1729-A(a)(1), 24 P.S. § 17-1729-A(a)(1), and provides sufficient grounds to terminate the charter. *Thurgood Marshall Academy Charter School, supra*, Docket No. CAB 2001-5 at 12, 13.

With regard to CCCHS's failure to offer the courses promised in the application, the evidence supports that conclusion as to three courses: Consumer Economics, Humanities I and Humanities II. Similarly, because school-to-work has been the focus of CCCHS's program and was one of the bases on which its charter was approved, it was a material failure when CCCHS did not assure that all of its students received this learning-through-working experience that CCCHS heavily promoted in its charter application. Both of these failures are additional examples of the charter school's failure to follow through and offer the educational programs promised in its charter school application. *See Thurgood Marshall Academy Charter School, supra*, Docket No. CAB 2001-5 at 12, 13. Therefore, these failures also constitute "material violations" of the School's charter under the CSL at section 1729-A(a)(1), 24 P.S. § 17-1729-A(a)(1), which is sufficient grounds to terminate the charter.

While CCCHS' failure to provide any of the above items individually may not necessarily constitute a material violation of the charter, "in the aggregate, they do constitute a material violation of the charter because together they constitute a significant part of [the] charter

school plan.” *Ronald H. Brown Charter School*, Docket No. CAB 2005-08 at 25; *RAPAH Charter School*, *supra*, Docket No. CAB 2007-03 at 14. Thus, in the aggregate the above-noted violations amount to a material violation of CCCHS’s charter justifying the nonrenewal of its charter.

3. Failure to Comply With Student Performance Standards Set Forth In Chapter 4 By Failing to Make AYP, Failure to Show Sustained Progress In Improving Student Performance, Failure to Improve Student Learning, and Failure to Meet the Goals and Standards Identified In Its Charter (Conclusions of Law 259 – 261 and 279).

The alleged deficiencies in student performance which were set forth in the Notice of Nonrenewal are as follows:

1. CCCHS has not made Adequate Yearly Progress for the past six (6) years and is in Corrective Action I.
2. Mathematics performance declined 32.5 percentage points from 2009 – 2010. PDE results show that the mathematics performance was 16.7% proficient/advanced for the 2010 – 2011 school year.
3. PDE results show that the reading performance was 41.7% proficient/advanced for the 2010 – 2011 school year.

With regard to student performance, CCCHS stated in its charter school application that its objectives included the “commitment to adhere to and prepare students to meet the standards of the Pittsburgh School District, the Commonwealth of Pennsylvania, and for comparative analysis on National norm-referenced assessments. S.D. Exhibit 1a at 34. It is reasonable to interpret CCCHS’s statement as establishing a goal of meeting the requirements for student performance set forth in the PDE’s regulations which is congruent with the CSL’s requiring that a charter school meet those requirements or be subject to the revocation or nonrenewal of its charter. *See* CSL at § 1729-A(a)(2), 24 P.S. § 17-1729-A(a)(2).

In Pennsylvania, the Pennsylvania System of School Assessment (“PSSA”) test is used, among other things, to determine the degree to which school programs enable students to attain proficiency of academic standards under applicable regulations at 22 Pa. Code. §4.12 (related to academic standards) and to provide information to the general public on school performance. 22 Pa. Code § 4.51(a)(2) and (5). The PSSA test is administered annually, in the spring, to all students in grades three, four, five, six, seven, eight and eleven. 22 Pa. Code § 4.51(d). It assesses students’ levels of proficiency in accordance with standards established by the State, 22 Pa. Code § 4.51(a)(2), assessing Mathematics and Reading for grades 3 – 8 and 11, Writing for grades 5, 8 and 11, and Science for grades 4, 8 and 11. 22 Pa. Code § 4.51(d). The levels of proficiency gauged by the PSSA test scores are classified as advanced, proficient, basic and below basic. 22 Pa. Code §4.51(b)(5).

In analyzing the data from annual PSSAs, the State makes a determination that a school is or is not making adequate yearly progress (“AYP”) by gauging student performance goals in Reading and Math which the State establishes for schools and districts to achieve each year. NT I at 51.¹¹ The PDE determines each school’s annual AYP status by looking at student performance on the PSSAs in Reading and Math, high school graduation rate, and PSSA participation rate. CCCHS Exhibit 3; NT I at 52; NT II at 58, 96. Each year, the PDE establishes the percentage of students at a school that must score proficient or advanced on the PSSA test in order for the school to meet the AYP performance requirements; in addition to these student performance requirements, a certain percentage of seniors must graduate from the

¹¹ For determining if schools met AYP proficiency standards in 2005 through 2007, the State established the following targets: Reading, 54% proficient or better; Math, 45% proficient or better. Similarly, for 2008, 2009, and 2010, the State established the following targets: Reading, 63% proficient or better; Math, 56% proficient or better. For 2011, the targets are: Reading, 72% proficient or better; Math, 67% proficient or better. And finally, for 2012, the targets are: Reading, 81% or better; Math, 78% or better. S.D. Exhibit 5a-f; CCCHS Exhibit 4.

school and a certain percentage of 11th graders must participate in the PSSA tests. NT II at 92 – 93.

A school may also meet AYP by improving over the previous year's results under the "Safe Harbor" provision, which means that if a school achieves a 10% decrease of students who scored below Proficient from the previous year, it meets the AYP target for performance. CCCHS Exhibit 4; NT II at 92 – 93, 99. "Confidence Interval" is a control for sampling errors or variation across years by promoting schools or subgroups that come very close to achieving their performance goal, thus meeting their specific goal. Finding of Fact 173. "Safe Harbor with Confidence Interval" means that a group met the performance measure by the Safe Harbor improvement criteria only when using a 75% Confidence Interval. Finding of Fact 174. Achieving AYP depends not only on the PSSA results of the student body as a whole, but also upon the results of test-takers within various subgroups, such as white students, African-American students, and economically disadvantaged students. If 40 or more test-takers in a given year fall into a subgroup, then that subgroup must achieve AYP in both Reading and Math in order for the school to achieve AYP as a whole. CCCHS Exhibit 4; NT II at 93.

With regard to CCCHS's PSSA proficiency levels in Math, CCCHS did not make its proficiency target in three of the seven school years since 2005-2006 and required the application of Safe Harbor or Confidence Intervals to make its target in the other four school years. S.D. Exhibit 5a-f; CCCHS Exhibit 4. For example, in the most recent year for which data is available, the 2011 – 2012 school year, the AYP target was 78%, but only 36.5% of CCCHS's students scored proficient or better; so CCCHS did not make AYP except with Safe Harbor. CR Tab I at 13. Thus, with regard to Math the record establishes that CCCHS failed to make AYP in the past

seven consecutive school years, 2005 – 2006 through 2011 – 2012. This evidence supports the allegations set forth by Pittsburgh in the Notice of Nonrenewal.

Pertaining to CCCHS's PSSA proficiency levels in Reading, the school did not meet its target in two of the seven school years since 2005-2006 and required application of Safe harbor or Confidence Intervals to make its target in the remaining five school years through the 2011-2012 school year. S.D. Exhibit 5a-f. In the last year for which data is available, the 2011 – 2012 school year, the AYP target in Reading was 81%, but only 50.8% of CCCHS's students scored proficient or better; so CCCHS did not make AYP except with Safe Harbor. CR Tab I at 27.

For Reading, the record establishes that CCCHS failed to make AYP in the past seven consecutive school years, from 2005 – 2006 through 2011 – 2012. S.D. Exhibits 5a – 5g; S.D. Exhibit 6d; CR Tab I at 13, 27; NT I at 53 – 57. Again, this evidence supports the allegations concerning failure to meet performance standards as stated in the Notice of Nonrenewal.

Moreover, because CCCHS failed to make AYP for the 2005 – 2006 school year, PDE placed it in Warning status. CCCHS Exhibit 4. Then, when CCCHS failed to make AYP for the 2006 – 2007 school year, PDE placed the School in School Improvement I status, *id.*; and when CCCHS failed to make AYP for the 2007 – 2008 school year, PDE placed it in School Improvement II status where it remained through the 2009 – 2010 school year. S.D. Exhibit 6a; CCCHS Exhibit 4. Upon improving no further, PDE placed CCCHS in Corrective Action I status for the 2010 – 2011 school year, and in Making Progress – Corrective Action I status for the 2011 – 2012 school year. S.D. Exhibit 6a; CCCHS Exhibit 4; CR Tab I at 1; NT I at 54. According to this AYP data, CCCHS has continuously failed to meet the State's standards of proficiency. Exhibits 5a – 5g; CR Tab I at 13, 27.

CCCHS argues that its students' performance is gradually improving. Brief of Petitioner at 17 – 18. While, over the past seven consecutive school years, CCCHS has made minor improvements in the number of students in the proficiency or above categories, the data of record still indicates that CCCHS has continuously failed to meet the State's standards of proficiency. Indeed, since the 2005 – 2006 school year, CCCHS has not met the state academic performance standard targets for all students or subgroups by directly meeting or exceeding the Pennsylvania targets without the aid of Safe Harbor or Confidence Intervals. S.D. Exhibits 5a – 5g; CR Tab I at 13, 27; CCCHS Exhibit 4; NT II at 186 – 187. These facts, coupled with the fact that CCCHS's status has deteriorated from Warning status in 2005, to Making Progress – Corrective Action I status in 2012, defeat the argument that it is improving.

The CSL at section 1729-A(a)(2), 24 P.S. § 17-1729-A(a)(2), authorizes the nonrenewal of a charter based on “[f]ailure to meet the requirements for student performance” set forth in the applicable regulations at 22 Pa. Code Chapter 4. CCCHS argues that neither 22 Pa. Code Chapter 4 nor CCCHS's charter establishes any requirement that students must attain a certain level of proficiency in PSSA testing. Brief of Petitioner at 15. However, CCCHS's charter application states, generally, that the School has a “commitment to adhere to and prepare students to meet the standards of the Pittsburgh School District, the Commonwealth of Pennsylvania, and for comparative analysis on National norm-referenced assessments.” S.D. Exhibit 1a at 34. No Child Left Behind sets the national norm-referenced assessments,¹² and

¹²“Adequate Yearly Progress (AYP), as part of the federal No Child Left Behind Act (NCLB), holds districts/LEAs accountable to students, their parents, teachers, and the community. The purpose of AYP is to ensure that all students have reading and math skills that prepare them for the future. The law states that all students must reach the Proficient level or higher in Reading or Language Arts and Mathematics by 2014. Districts/LEAs and schools must show Adequate Yearly Progress on several measurable indicators: Attendance or Graduation Rate, Academic Performance, and Test Participation. AYP measures determine whether a school or district/LEA is making sufficient annual progress towards the goal of 100% proficiency.” Pennsylvania Department of Education,

(Footnote continued on next page.)

AYP is the academic standard tied to No Child Left Behind. *Renaissance Charter School*, Docket No. CAB 2008 – 07 at 10. For that reason, the CAB previously has determined that a charter school’s failure to make AYP in four out of five years of the school’s charter is the equivalent of failing to meet minimum performance standards, making nonrenewal of the school’s charter appropriate. *Id.*

Moreover, the Commonwealth Court in *Ronald H. Brown Charter School*, *supra*, 928 A.2d 1145, stated that the CAB can “reasonably rely on the PSSA results, the uniform test used statewide to measure performance,” in finding that a charter school has failed to meet the requirements for student performance pursuant to section 1729-A(a)(2) of the CSL, 24 P.S. § 1729-A(a)(2). *Ronald H. Brown Charter School*, *supra*, 928 A.2d at 1153. CCCHS attempts to distinguish *Ronald H. Brown Charter School* from this case, asserting that the charter in that case was not renewed because the students’ PSSA test scores failed to meet performance standards set forth in the school’s charter. Brief of Petitioner at 17.

However, CCCHS’s argument is narrower than the appellate court’s ruling in *Ronald H. Brown Charter School*. In that case, the Commonwealth Court’s rendition of the history of the case indicated that:

On September 12, 2005, the Board of Control of the School District determined that the School’s charter should not be renewed based on its failure to comply with, among other violations, the financial and **performance standard requirements pursuant to Section 1729-A(a)(1) – (4) of the Charter School Law, 24 P.S. § 17-1729-A(a)(1) – (4).**

Ronald H. Brown Charter School, *supra*, 928 A.2d at 1146 (emphasis added). Additionally, the Court set forth the issue pertaining to PSSA scores as follows:

Academic Achievement Report: 2011 – 2012, *Why Adequate Yearly Progress?* (visited June 21, 2013) <<http://paayp.emetric.net/Home/About>>.

Regarding the School's academic performance of the students, the School alleges that the Board used the Pennsylvania System of School Assessment (PSSA), an incorrect standard for interpreting the academic progress of the students, **and concluded that the School did not meet the requirements for student performance pursuant to Section 1729-A(a)(2) of the Charter School Law, 24 P.S. § 1729-A(a)(2).**

Ronald H. Brown Charter School, supra, 928 A.2d at 1152 (emphasis added). Then, in arriving at its ruling, the Court stated that the school board "could reasonably rely on the PSSA results, the uniform test used statewide to measure performance." *Id.* at 1153. The opinion ended with the following determination:

Because there was substantial evidence that the School did not show improvement in the students' performance and it was within the Board's prerogative to rely on the PSSA results, we agree with the Board that this was also a ground for non-renewal of the School's charter.

Ronald H. Brown Charter School, supra, 928 A.2d at 1153.

Nowhere in this opinion did the Court state narrowly, as CCCHS asserts, that it is reasonable for a district to rely on the PSSA results *only* in a situation in which the district is refusing to renew a charter based on a school's failure to meet the performance objectives stated in its charter application. Indeed, based on the quoted passages above, the Court broadly and clearly defined the case as involving the issue of whether the school met the requirements for student performance pursuant to section 1729-A(a)(2) of the CSL, 24 P.S. § 1729-A(a)(2). Therefore, the Court's conclusion has a broader application than that advocated by CCCHS, and the decision supports a district's justification in relying on PSSA results as a ground for nonrenewal of the school's charter under the CSL at section 1729-A(a)(2), 24 P.S. § 1729-A(a)(2), for failure to meet requirements of student performance set forth in 22 Pa. Code Chapter 4.

Coupling that determination with the CAB's previous ruling in *Renaissance Charter School, supra*, Docket No. CAB 2008 – 07, that a charter school's failure to make AYP in four out of five years of the school's charter is the equivalent of failing to meet minimum performance standards, making nonrenewal of the school's charter appropriate, makes it entirely reasonable and logical to rely on the PSSA scores, which are the basis for determining AYP, as the basis for finding that State standards have been violated. Accordingly, in failing to make AYP and in continuing to drop in school status, CCCHS's poor performance is the equivalent of failing to meet minimum performance standards related to academic performance, which justifies the nonrenewal of its charter.

CCCHS also argues that its scores generally exceed those of its primary feeder schools, so it should not be found to have failed to meet academic performance standards. It listed as its top 12 feeder schools Peabody High School, Schenley High School, Wilkinsburg High School, University Prep, Oliver High School, Brashear High School, Carrick High School, Penn Hills High School, Langley High School, Allderdice High School, and Woodland Hills High School. CCCHS Exhibit 2. But the School's assertion is not accurate. According to CCCHS's own exhibit, CCCHS outperformed eight of its 12 top feeder schools in 2010 on its PSSA Math scores, five of its 12 top feeder schools in 2010 in its PSSA Reading scores, two of its 11 (one of the 12 had closed) top feeder schools in 2011 on PSSA Math scores, and five of its 11 (one of the 12 had closed) top feeder schools in 2011 on its PSSA Reading scores.

That means that with regard to the 2010 Math PSSA scores, only four of the top 12 feeder schools had scores higher than CCCHS; but with regard to the 2010 Reading PSSA scores, seven of the 12 top feeder schools outscored CCCHS; with regard to the 2011 Math PSSA scores, nine of the 11 (one of the 12 had closed) top feeder schools outscored CCCHS; and with regard to the

2011 Reading PSSA scores, six of the 11 (one of the 12 had closed) top feeder schools outscored CCCHS. In other words, except for 2010 Math PSSA scores, the majority of the 12 top feeder schools outperformed CCCHS. CCCHS disingenuously skews the statistics by looking at seven out of eight or five out of six, instead of consistently looking at all 12 (or all 11 in 2011). As a result, CCCHS's argument does not warrant credence. Instead, the opposite conclusion is supported by the evidence: overall, CCCHS has not performed as well as other School District charter schools or as well as the majority of other School District high schools. S.D. Exhibits 6b and 6d; NT I at 60, 63 – 64, 64 – 65, 65 – 66.

Moreover, as of the date of the hearings in this matter, Pittsburgh has closed or planned to close the majority of its most low-performing high schools, all of which were in Corrective Action II status, and four of which were among CCCHS's 12 top feeder schools, including Schenley High School, Peabody High School, Langley High School and Oliver High School; and in 2011 – 2012, Pittsburgh had reconfigured one other low-performing high school in CCCHS's 12 top feeder schools, Westinghouse High School. CCCHS Exhibit 2; NT I at 62; NT II at 184. Schenley had outperformed CCCHS on PSSA scores in 2010, but yet it was closed. It is consistent with that outcome and holds CCCHS to the same standards for the School District to refuse to renew the CCCHS charter.

Based upon the data summarized above, the School District has proved by a preponderance of the evidence that CCCHS has neither met its general "commitment to adhere to and prepare students to meet the standards of the Pittsburgh School District, the Commonwealth of Pennsylvania, and for comparative analysis on National norm-referenced assessments," S.D. Exhibit 1a at 34; nor has CCCHS met the requirements for student performance set forth in the

applicable PDE regulations. Accordingly, the evidence supports the termination of CCCHS's charter based on poor student performance.

4. Section 1729-A(a)(3), 24 P.S. § 17-1729-A(a)(3): Failure to Meet Generally Accepted Standards Of Fiscal Management Or Audit Requirements (Conclusion of Law 270).

Concerning financing, Pittsburgh contends that CCCHS failed to fund its budgetary reserve thereby evidencing CCCHS's failure to meet generally accepted standards of fiscal management and violating section 1729-A(a)(3) of the CSL, 24 P.S. § 17-1729-A(a)(3). *See.*, S.D. Exhibit 4d. The facts proven at the hearing below, however, support neither the factual conclusion as to lack of funds in the School's budgetary reserve nor the conclusion of law that issues related to CCCHS's budgetary reserve demonstrate a violation of generally accepted standards of fiscal management or audit requirements. Thus, this ground for nonrenewal is rejected by CAB.

The evidence, as set forth in the Findings of Fact, demonstrates that CCCHS's budget for the fiscal year that ended June 30, 2011 had a specific line item, item 5900, for budgetary reserve, which would be the amount of reserve funding that the charter school anticipated using in that budget year. CCCHS Exhibit 20; NT III at 114 – 115. When CCCHS budgeted for fiscal year 2010 – 2011, CCCHS did not expect to use any funds from its reserve funds, so the amount in its budget, at line item 5900, was zero. CCCHS Exhibit 20; NT III at 115. Thereafter, CCCHS did partially use its fund balance for expenses during the 2010 – 2011 school year, but nonetheless, the School's budgetary reserve as of June 30, 2011 was still \$822,313. CCCHS Exhibits 21 and 51.

Additionally, CCCHS has had a fund balance during each of the last five years, and as of the date of the last hearing in this matter, CCCHS was operating with a budget surplus and an

undesignated fund balance. CCCHS Exhibit 22; NT III at 112 – 113, 115. Interestingly, in its Brief, Pittsburgh essentially conceded that its allegation concerning lack of funds in the budgetary reserve was unsupported.¹³ Accordingly, CAB finds that there is no evidence to demonstrate that CCCHS is not placing any funds in the school’s budgetary reserve and in fact that the contrary is true. It is for these reasons that CAB rejects this ground for renewal.

**5. Section 1729-A(a)(4), 24 P.S. § 17-1729-A(a)(4):
Violations of Article XVII-A of the CSL/Failure to Be
Faithful to Applicable Law (Conclusions of Law 272,
273 AND 279).**

This alleged violation of applicable law concerns public school facility regulations pertaining to the health and safety of pupils from which CCCHS is not exempt and is based on the Pittsburgh facilities inspection report. Pittsburgh contends that this violation is evidence that CCCHS violated a provision of the CSL, subjecting it to nonrenewal under section 1729-A(a)(4) of the CSL, 24 P.S. § 17-1729-A(a)(4). The School District’s Notice of Nonrenewal stated that “Facilities issues as noted in the Radelet McCarthy & Polletta memo dated November 28, 2011 and incorporated herein by reference. S.D. Exhibit 4d.

The evidence produced at the hearing indicates the following: Pursuant to an occupancy permit issued by the City of Pittsburgh, CCCHS has occupied the same school facility since Pittsburgh granted its charter. NT II at 310. No code official has ever notified CCCHS that its facility is in violation of any applicable building code. NT II at 310 – 311, 317. Pittsburgh conducts annual reviews of CCCHS, which typically include a representative of Pittsburgh inspecting CCCHS’s facility; and following each annual review, Pittsburgh has provided

¹³ Pittsburgh actually made an argument contrary to its allegation the CCCHS is failing to fund its budgetary reserve, when in its Brief, Pittsburgh stated that CCCHS had built up “a massive reserve fund.” Brief of Respondent at 36.

CCCHS with recommendations for improving the facility, which CCCHS starts to address immediately upon receipt of the recommendations. NT II at 311 – 312.

A registered architect under contract with Pittsburgh performed reviews of CCCHS's facility on November 22, 2010 and on October 31, 2011. Exhibits 8a and 8b; NT I at 117 – 121, 123. In each instance, he prepared a report indicating which items from the previous year's inspection had been addressed and which items from the previous year's inspection had not been addressed, as well as new items which he had observed requiring action. S.D. Exhibits 8a and 8b; NT I at 120 – 121, 127 – 128, 130. The Director of School Services for CCCHS accompanied the School District's architect during the facility reviews, taking notes so that the School could begin making changes or fixing items noted during the inspection immediately upon the inspectors' walking out the door. NT I at 123; NT II at 312, 320. During the course of the October 31, 2011 inspection, the Pittsburgh architect noted four items from the prior year's inspection which had been addressed and discussed with the Director of School Services the fact that they had been completed. NT I at 123, 127 – 128; NT II at 313 – 314. The Pittsburgh architect measured corridor widths during his inspection but did not say anything about them. NT II at 326.

The architect prepared a report of his October 31, 2011 inspection which was dated November 28, 2011 and provided it to Pittsburgh. S.D. Exhibit 8b; NT I at 127 – 128, 130. The report listed two items from the previous year's inspection which had been addressed as of the date of the hearings in this matter and also listed five new items to be addressed. S.D. Exhibit 8b; CCCHS Exhibit 52; NT II at 314, 315, 318 – 319. Of those five new items, numbers 3, 4 and 5 have been corrected; but numbers 1 and 2 referred to the corridor widths on the existing second floor and the existing basement and recommended that the occupant load of each corridor be

calculated as required by the building code; and *if* the occupant load exceeds 100, the lockers should be removed as necessary to achieve 6'-0" corridor width. S.D. Exhibit 8b; NT II at 315 – 316, 316 – 317. However, the architect had calculated the occupant load in his November 28, 2011 report, so he did not opine as to whether there was a code violation of any kind, nor did his report state that there was an actual violation. S.D. Exhibit 8b; NT I at 129 – 130. This was the first time that CCCHS received any notice from any code official that the corridor widths in question were in violation of code. NT II at 317.

Based on these facts, there is insufficient evidence to indicate that CCCHS has violated any provision of the CSL or any other law in relation to its facilities. Pittsburgh argues in its Brief that:

[v]iolations of public school facility regulations pertaining to the health and safety of pupils, as noted in the facilities inspection report, [sic] is evidence that Career Connections is in violation of a provision of the Charter School Law.

Brief of Respondent at 47. However, the facilities inspection report does not note any violations of public school facility regulations; nor does it note violations of any provisions of the CSL. Moreover, the architect testified that he did not calculate the occupant load for the two corridors in question, so he was unable to opine whether there was a code violation of any kind. NT I at 129 – 130. Therefore, the School District's argument is not supported by the evidence, and this basis for nonrenewal is also rejected by CAB.

III. CONCLUSION

In summary, the evidence in the record weighs in support of demonstrated grounds for termination of CCCHS's charter. CCCHS committed a number of material violations of its charter. Additionally, CCCHS made changes to its promised program without seeking the approval of the School District, which approval was necessary. Therefore, CCCHS's failure to

provide the promised items, and its accompanying failure to seek approval from the School District for amending the charter by dropping them or replacing them with alternatives, comprise material violations of CCCHS's charter which justify nonrenewal.

Sufficient grounds for termination also lie in the record evidence which demonstrates that CCCHS failed to meet the requirements for student performance set forth in the PDE's regulations, as well as CCCHS's own "commitment to adhere to and prepare students to meet the standards of the Pittsburgh School District, the Commonwealth of Pennsylvania, and for comparative analysis on National norm-referenced assessments," S.D. Exhibit 1a at 34. The evidence, in the form of the PSSAs, the PVAAS and the PDE's proficiency standards, clearly demonstrates that CCCHS is failing in the area of student performance despite the objectives stated in its charter and the requirements of the Commonwealth of Pennsylvania, and National norm-referenced assessments.

In summary, Pittsburgh had sufficient legal grounds, and provided sufficient evidence in support of those legal grounds, to refuse to renew the charter of CCCHS under the CSL at section 1729-A(a)(1) and (2), 24 P.S. § 17-1729-A(a)(1) and (2).

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
STATE CHARTER SCHOOL APPEAL BOARD

Career Connections Charter High School, :
Petitioner :
v. : Docket No. CAB 2012-12
School District of Pittsburgh, :
Respondent :

ORDER

AND NOW, this 7th day of October, 2013, based upon the foregoing and the vote of this Board,¹⁴ the appeal of the Career Connections Charter High School is **DENIED**. This decision will become effective as of January 25, 2014 in order that the students enrolled in Career Connections Charter High School may complete the fall term of the 2013-2014 school year.

For the State Charter School Appeal Board


Chair

For Petitioner: Robert Max Junker, Esquire
THE LAW OFFICES OF IRA WEISS
445 Fort Pitt Blvd., Suite 503
Pittsburgh, PA 15219

For Respondent: Matt Hoffman, Esquire
David J. Mongillo, Esquire
TUCKER ARENSBERG, P.C.
1500 One PPG Place
Pittsburgh, PA 15222

Date of mailing: 10/7/13

¹⁴ At the September 24, 2013 meeting of the State Charter Appeal Board, the appeal was denied by a vote of 5 to 0, with members Barker, Dumaresq, Lawrence, Munger and Yanyanin voting to deny the appeal. Board Member Magnotto was absent; and the seat of the Pennsylvania State Education Association Member is vacant.