

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

Imani Education Circle Charter School,	:	
Petitioner,	:	
	:	
v.	:	Docket No. CAB 2014-08
	:	
School District of Philadelphia,	:	
Respondent.	:	

OPINION

HISTORY

In accordance with the Charter School Law, Act of June 19, 1997, P.L. 225, No. 22, *as amended*, 24 P.S. §17-1701-A *et seq.* (hereinafter “CSL”), this matter comes before the Pennsylvania State Charter School Appeal Board (hereinafter “CAB”) on the appeal by Imani Education Circle Charter School (hereinafter “Imani”) from the decision of the School Reform Commission of the School District of Philadelphia (hereinafter “the District”) to not renew its charter.

Imani began operation in the 1999-2000 school year under a charter granted by the District. This charter was renewed by the District for additional five-year terms in both 2003 and 2008. After Imani applied for its next renewal, the School Reform Commission¹ (“SRC”), on May 15, 2013, issued a resolution for nonrenewal of Imani’s charter based upon nine grounds. Hearings concerning the nonrenewal were held over five dates from July 23 through September 26, 2013. Subsequent to the required public comment period and the filing of briefs, the hearing officer certified the record and transmitted recommendations to the SRC. The hearing officer recommended nonrenewal on only one of the nine originally asserted grounds, that being failure to meet generally accepted standards of fiscal

¹ By way of a 1998 amendment to the Public School Code, the School Reform Commission was established as the governing body of the School District of Philadelphia. 24 P.S. §6-696.

management. After seeking additional counsel and advice regarding the matter, the SRC voted to nonrenew Imani's charter for the reason recommended by the hearing officer, in addition to four other grounds related to student achievement.

Imani appealed to CAB on December 19, 2014 and filed an Amended Petition for Appeal on May 15, 2015. Thereafter, CAB assigned a Hearing Officer to preside over all preliminary matters in this appeal and to certify the record to CAB for purposes of final adjudication. After speaking with the parties by phone on April 9, 2015, the Hearing Officer issued a Case Management Order that, among other things, permitted the parties to seek to supplement the record by filing an appropriate motion. Pursuant to that order, on June 4, 2015, the School District filed a motion that sought, among other things, an opportunity to supplement the record through a hearing, which motion was denied by the Hearing Officer. The parties also stipulated to the admission of several exhibits that were not previously available at the time of the SRC proceedings, specifically, the Exhibits marked CS Exs. 17 through 22 and SD Exs. 20 through 24, which were admitted into the record by an Order dated June 24, 2015.

The parties timely filed briefs in support of their respective positions on the merits of the appeal. They presented their arguments to CAB on October 13, 2015. For the reasons set forth below, CAB holds that the District had sufficient grounds to justify its nonrenewal of Imani's charter under the criteria set forth in the CSL at Section 1729-A, 24 P.S. §17-1729-A.

FINDINGS OF FACT

A. Procedural History

1. Imani Education Circle Charter School ("Imani") is a Pennsylvania nonprofit corporation and charter school organized and operating under the Pennsylvania Charter School Law, 24 P.S. §§ 17-1701-A. *et seq.*, with its principal place of business located at 5612

Greene Street, Philadelphia, Pennsylvania 19144.

2. The School District of Philadelphia (“District”) is a public school district of the first class, organized and operating under the Pennsylvania School Code (24 P.S. §§ 1-101, *et seq.*), with its principal offices located at 440 North Broad Street, Philadelphia, Pennsylvania 19130.

3. The School Reform Commission (“SRC”) was established as the governing body for the District pursuant to 24 P.S. § 6-696.

4. On November 16, 1998, Imani applied for its initial charter, which was granted by the District for a five-year term. *See* J-3, p. 1, J-2, p. 1.²

5. On March 21, 2003 the District renewed Imani’s charter for another five-year term. *See* J-4, pp. 1 & 6.

6. On April 16, 2008, the District renewed Imani's charter for a second time until June 30, 2013. *See* J-5, pp. 1&5.

7. On December 19, 2012, Imani filed a third charter renewal application with the District. *See* J-6, p. 1.

8. The Charter School Office subsequently made a nonrenewal recommendation to the SRC regarding Imani’s charter renewal application. *See* J-23.

9. The Charter School Office’s recommendation was based upon a comprehensive review and analysis organized into four domains: (1) Academic Performance; (2) Organizational Health; (3) Financial Health; and (4) customer Satisfaction. *See* J-23.

² The exhibits admitted into evidence will be referenced as follows: Joint Exhibits as J-_, Hearing Officer Exhibits as HO-_, School District Exhibits as SD-_, and Imani Exhibits as CS-_. The parties stipulated that all of the documents admitted as Joint Exhibits were authentic and that no further testimony was needed to authenticate any of those documents. *See* J-31, ¶4. The Notes of Testimony from each day will be referred to by the date of each. Although the transcripts were supposed to be consecutively numbered, it appears that the July 24 and 25 transcripts are not.

10. The Charter School Office's 2013 Renewal Recommendation Report for Imani included the following ratings associated with the four domains:

- a. Academic Domain Rating: Area of Concern
- b. Organizational Health Rating: Acceptable with Deficiencies
- c. Financial Health Rating: Area of Concern
- d. Customer Satisfaction Domain Rating: Acceptable

See J-23, p. 1.

11. On May 15, 2013, the SRC passed a resolution (SRC-24) instituting nonrenewal proceedings against Imani, which set forth nine reasons why the District sought not to renew the charter. See J-1.³

12. The District appointed a Hearing Officer for the nonrenewal proceedings and directed that the nonrenewal proceedings be conducted pursuant to section 17-1729-A(c) of the Charter School Law, 24 P.S. § 17-1729-A(c), and the Administrative Agency Law, Practice and Procedure of Local Agencies, 2 Pa.C.S.A. §§ 551, *et seq.*

13. Hearings in this matter were held on July 23, 24, 25 and 30, August 16 and September 26, 2013.

³ The grounds for nonrenewal in SRC-24 were that the Charter School, during the term of its charter:

1. Failed to make adequate yearly progress ("AYP") during 2011 and 2012, as required by its charter agreement.
2. Had PSSA proficiency scores in reading that were consistently lower than the State targets, the School District average, and the Charter School average.
3. Had PSSA proficiency scores in math that were consistently lower than the State targets, the School District average, and the Charter School average.
4. Consistently lagged behind the State's growth standard in math, based on the Pennsylvania Value-Added Assessment System ("PVAAS"), which measures academic growth.
5. Failed to meet the 100% highly qualified teacher requirement, as required by the No Child Left Behind Act.
6. Failed to fully develop procedures to evaluate school leaders
7. Failed to establish specific goals and priorities to guide school programs, staff development and student achievement.
8. Failed to meet generally accepted standards of fiscal management or audit requirements *inter alia* because it had operating deficits for fiscal years 2009-2012, its net assets have decreased by more than \$1.2 million during fiscal years 2009-2012, it has negative working capital, negative unrestricted net assets and a current ratio less than 1.0, it did not make the required debt service coverage ratio for FY 2011 and 2012 nor did it obtain a waiver from the lender, and it had fewer than fifteen (15) days of cash on hand as of June 30, 2012.
9. The Charter School's application process provides certain barriers to entry of students to the charter school in violation of the Charter School Law.

See J-1, pp. 1-2.

14. In accordance with Section 17-1729-A(c) of the Charter School Law, a 30-day public comment was also provided.

B. The Terms of Imani's Charters and its Academic Performance

15. The various charters issued to Imani over the years have incorporated the terms of the original application submitted by Imani to operate as a charter school. *See* J-2, p. 1; J-4, pp. 2 and 4; J-5, pp. 1 and 4.

16. Imani's original charter school application included the following representations and goals about the promised educational programming and academic achievement at Imani:

- a. At the outset of the section entitled "School Design," the application stated: "*High student academic achievement is the primary goal of Imani Education Circle Charter School.*" *See* 7/23/13 N.T. 13; J-3, p. 5 (italics added).
- b. "[Imani] will provide students with a rigorous, academically challenging experiential learning curriculum that focuses on developing high levels of skill in reading, mathematics, science and computer technologies in the context of understanding ethnic heritage and world cultures. All subject areas will be designed to meet the Philadelphia School District's world class standards, as well as national and state-developed standards."

See 7/23/13 N.T. 14; J-3, p. 11.

17. The 2008 charter signed by Imani included the following provisions relative to the academic performance that was expected:

- a. "The Charter Board shall operate the Charter School in conformity with the mission statement set forth in the Application."⁴ *See* J-5, p. 4.
- b. "The Educational Plan [of the Charter School] shall prepare students at the Charter School for participation in the Pennsylvania System of School Assessment (the "PSSA") as provided for in 22 Pa. Code Ch. 5 (relating to curriculum), or subsequent regulations promulgated to replace or amend 22 Pa. Code Ch. 5, in the manner in which the School District is scheduled to participate." *See* 7/23/13 N.T. 20-21; J-5, p. 8.

⁴ The "Application" was defined in the 2008 charter as the Application submitted by the founding coalition of the Charter School. (J-5, p. 1).

- c. "The Charter School shall apply as a minimum performance standard for its academic assessments the applicable performance standards associated with the academic components of NCLB, as well as the applicable Commonwealth of Pennsylvania assessment systems, professional responsibility and accountability systems, including the PSSA or its duly approved successor." *See 7/23/13 N.T. 20-21; J-5, p. 8.*
- d. "The Charter School shall administer all required federal, state and local standardized tests in compliance with all Applicable Laws. The Charter School shall provide classroom instruction which shall include, but not be limited to, instruction on the essential knowledge and skills necessary to achieve course completion or course credit, including end of course examinations (if required by the School District), and passing scores on TerraNova, PSSA, and PASA (Pennsylvania Alternative State Assessment) where applicable, and all other tests and exams required by Applicable Law." *See J-5, pp. 13-14.*
- e. Article X of the 2008 Charter is entitled "Accountability." *See J-5, pp. 14-17.* Subparagraph D.3. under Article X states as follows:
 - D. The Charter School acknowledges and agrees that failure to meet the accountability criteria specified in this Charter, in whole or in part, constitutes grounds for nonrenewal or revocation of this Charter:
 - ***
 - 3. Program.
 - a. The Charter School agrees to achieve AYP and the Pennsylvania Value-Added Assessment System ("PVAAS") growth measure consistent with the Pennsylvania Department of Education's Accountability System pursuant to NCLB for each year during the five (5)-year Term of this Charter.
 - ***

See J-5, pp. 15-16.

18. In its 2008 renewal application in response to the direction to "[i]dentify specific goals and measurable outcomes for student and school progress," Imani stated that its goal was to "[i]ncrease standardized test scores by 7% per year over the next five years." *See J-28, p. 22.*

19. As part of the 2012 renewal process, Imani analyzed whether or not it had met the academic goals that it had set for itself for the 2008 charter. This analysis showed that it had only achieved a 7% annual gain in three of the four tested areas and then only in one of the five years. *See J-6, p. 5.*

20. Chapter 4 of the State Board of Education regulations contains the academic standards for reading, writing, speaking and language and mathematics. "The standards identify the skills that students need to be able to demonstrate in those subject areas and they also set out the skills that schools and districts should be designing their curriculum to address." *See 7/23/13 N.T. 76.* The attainment of the state measures is measure by the overall proficiency rates on the PSSA. *See 7/23/13 N.T. 78.*

21. The Chapter 4 regulations address the requirement of the federal No Child Left Behind Act that the Commonwealth must administer an assessment that is reliable and valid in measuring the academic standards that are set forth by the Pennsylvania Department of Education. *See 7/23/13 N.T. 78.*

22. The United States Department of Education ("USDOE") reviews PDE's proposal for the assessment system and how that assessment system will be utilized for accountability purposes as those matters are described in a document styled the "Accountability Workbook," and USDOE has approved PDE's submission. *See 7/23/13 N.T. 75, 78-79: J-25.*

23. Joint Exhibit 25 is the latest version of the Accountability Workbook approved by the USDOE. *See 7/23/13 N.T. 75.*

24. The Accountability Workbook includes the approved ways to make Adequate Yearly Progress ("AYP") in Pennsylvania. *See 7/23/13 N.T. 80.*

25. According to the Accountability Workbook, all public schools must meet the following proficiency targets in math and reading. The performance targets for the years in question in Math are 2009 and 2010 – 56%, 2011 – 67% and 2012 – 78%. The performance targets for the years in question in Reading are 2009 and 2010 – 63%, 2011 – 72% and 2012 –

81%. See J-25, pp. 31-32.

26. Imani's academic performance in Math and Reading has not met the Pennsylvania targets in any year of the 2008 charter. See 7/23/13 N.T.164-165; J-25, pp. 31-23; SD-2.

27. In terms of aggregate numbers for all tested grades (3-8) in each year, the percentage of Imani students who scored Advanced/Proficient on the PSSA in Math and Reading in comparison to the State targets in each year are as follows:

Year	Reading Target	Reading- Adv	Math Target	Math- Adv
2009	63%	54.1%	56%	44.8%
2010	63%	46.2%	56%	47.2%
2011	72%	48.5%	67%	50.0%
2012	81%	42.5%	78%	41.7%

See J-9, p. 2; J-25, pp. 31-32; SD-2.

28. Chapter 4 also offers alternative means of making AYP other than meeting the performance targets set by the State, which include the use of the confidence interval, safe harbor, safe harbor with confidence interval or through the growth model. See 7/23/13 N.T. 83; see also the legend in J-9, p. 2.

29. Each of these alternative ways to make AYP has been approved by the USDOE. See 7/23/13 N.T. 83; J-25, pp. 24-27.

30. There are no other ways to meet the AYP proficiency targets each year other than those ways under Chapter 4 that have been approved by the USDOE. See 7/23/13 N.T. 83.

31. If a school does not achieve AYP in a given year, the school is categorized into the following status levels from highest to lowest as follows: Making AYP; Warning; School Improvement I; School Improvement II; Corrective Action I; Corrective Action II. See 7/23/13 N.T. 138.

32. Imani achieved AYP in school year 2008-09. See J-7, p. 2.

33. Imani achieved AYP in school year 2009-10. *See* J-7, p. 2.
34. Imani did not achieve AYP in 2010-11. *See* J-7, p. 1.
35. Imani entered Warning status following the 2010-11 school year. *See* J-7, p. 1.
36. Imani did not achieve AYP in 2011-12. *See* J-7, p. 1.
37. Imani entered School Improvement I status following the 2011-12 school year. *See* J-7, p.1.
38. The AYP system, with the approval of USDOE, was abolished and replaced with the School Performance Profile ("SPP") system commencing in 2012-2013. *See*, <http://PA SPP FAQs>.
39. The SPP uses multiple academic measures and provides a building level score that will be used to track achievement for state level accountability. One of the purposes of the SPP is to "[o]ffer a resource for LEAs to communicate and compare performance, analyze performance indicators as related to achievement, and encourage best practice [to] ... compare performance of schools; compare performance to schools with similar demographics; and communicate performance to various constituencies." *Id.*
40. For the 2013-2014 school year, Imani's SPP Building Level Score was 59.2, which fell within the lowest classification of the SPP system. SD Ex. 20 at 6.
41. Imani's SPP Building Score for the 2013-2014 school year decreased 14.6 points from Imani's SPP Building Score for the 2012-2013 school year -- a decrease of 19.78 percent. SD Ex. 20 at 6.
42. In the 2013-2014 school year, 45.21% of Imani's students who were tested on the PSSA in Math scored proficient or advanced, which was in the lowest performing SPP category. SD Ex. 20 at 6.
43. With 45.21% of Imani's students scoring proficient or advanced in Math, this

represents a 20.59% decrease from the 2012-2013 school year where the percentage of students scoring proficient or advanced was 56.93%. *Id.*

44. In the 2013-2014 school year, 44.52% of Imani's students who were tested on the PSSA in Reading scored proficient or advanced which was in the lowest performing SPP category. *Id.*

45. With 44.52% of Imani's students scoring proficient or advanced in Reading, this represents a 3.11% decrease from the 2012-2013 school year where the percentage of students scoring proficient or advanced was 45.95%. *Id.*

46. In the 2013-2014 school year, 42.71% of Imani's students who were tested on the PSSA in Science scored proficient or advanced which was in the lowest performing SPP category. *Id.*

47. With 42.71% of Imani's students scoring proficient or advanced in Science/Biology, this represents a 20.54% decrease from the 2012-2013 school year where the percentage of students scoring proficient or advanced was 53.75%. *Id.*

48. In the 2013-2014 school year, 47.27% of Imani's Grade 3 students who were tested on the PSSA Exam in Reading scored proficient or advanced which was in the lowest performing SPP category. *Id.*

49. With 47.27% of Imani's Grade 3 students scoring proficient or advanced in Reading, this represents an 11.63% decrease from the 2012-2013 school year where the percentage of students scoring proficient or advanced was 53.49%. *Id.*

50. In the 2013-2014 school year, Imani received a score of 50.00 in the Math Indicators of Academic Growth/PVAAS component. *Id.* That percentage fell in the lowest performing SPP category and indicates that Imani did not meet the Pennsylvania growth standard in Math. *Id.*

51. In the 2013-2014 school year, Imani received a score of 53.00 in the Reading Indicators of Academic Growth/PVAAS component. *Id.* That percentage fell in the lowest performing SPP category and indicates that Imani did not meet the Pennsylvania growth standard in Reading. *Id.*

52. In the 2013-2014 school year, Imani received a score of 58.00 in the Science Indicators of Academic Growth/PVAAS component. *Id.* That percentage fell in the lowest performing SPP category and indicated that Imani did not meet the Pennsylvania growth standard in Science. *Id.*

53. Comparing the aggregate percentage of all students at Imani in tested grades 3-8 who scored Advanced/Proficient on the PSSAs to the State target and to the overall proficiency rates⁵ for all of the District schools with grades 3-8 and all of the brick and mortar charter schools located within Philadelphia with grades 3-8 shows that Imani's students had the lowest percentage in every year from 2009 through 2012. *See* SD

54. A comparison of the aggregate percentage of all tested students at Imani scoring Below Basic on the PSSAs in comparison to the aggregate percentage of students scoring Below Basic in the District's schools with grades 3-8 and in the brick and mortar charter schools located within Philadelphia with grades 3-8 shows that Imani's aggregate percentages were consistently higher. *See*, SD-2.

55. Dr. Alex Schuh ("Dr. Schuh") is a consultant who testified for Imani. *See* 8/16/13 N.T. 300.

56. The 2013 State Targets in Math and Reading were 89% and 91% respectively. *See* J-25, pp. 31-32.

⁵ The "overall proficiency rate" is the rate among all of the students tested in the District or all of the students enrolled in brick and mortar charter schools in Philadelphia. *See* 4/29/13, N.T. 100.

57. PDE had not released any results from 2013 by the close of the record in this appeal so as to determine whether Imani had made AYP in 2013. *See* 7/30/13 N.T. 243-244; 8/16/13 N.T. 389-390.

58. Dr. Schuh, however, reviewed Imani's PSSA data from 2013 and calculated that 56.9% of Imani's students scored Advanced or Proficient in Math, and 46.0% of Imani's students scored Advanced or Proficient in Reading. *See* CS-7. Dr. Schuh testified that these were his calculations, not PDE's calculations. *See* 8/16/13 N.T. 389.

59. Even under PVAAS, which is a system through which progress among groups of students on the state standardized assessments can be tracked for a given school, Imani's levels of growth are mixed, and Imani did not meet Pennsylvania's standard for academic growth in 2012, the latest year for which that information was available. *See* 7/23/13 N.T. 124, 127-128, *See* J-14 &J-15.

C. Imani's Financial Health

60. Mayer Krain ("Mr. Krain") is employed by the School District as Auditor II and is a senior auditor in the Office of Auditing Services ("OAS"). *See* 7/24/13 N.T. 205.

61. Mr. Krain is a Certified Public Accountant ("CPA"). In his position as Auditor II for the last nine years, he performs fraud audits, charter school audits and contract audits. *See* 7/24/13 N.T. 205-206. Prior to working for the School District, Mr. Krain has had experience working in an international CPA firm, the mortgage banking business and the commercial real estate markets, all in his capacity as a CPA. *See* 7/24/13 N.T. 241-42.

62. The School District's OAS performs financial reviews of charter schools to form opinions on whether the charter schools are operating under generally accepted standards of fiscal management. *See* 7/24/13 N.T. 206.

63. The OAS performed a financial review of Imani at the request of the Charter School Office in 2012. *See* 7/24/13 N.T. 211. As part of the audit, OAS looked at Imani's attendance, financials, contracts, leases, arm's length transactions, people involved with the school, filing of annual interest statements and board minutes and performed ratio testing. *See* 7/24/13 N.T. 213.

64. As part of the Imani review, Mr. Krain reviewed Imani's financial audits performed by Siegal & Drossner for years ending June 30, 2008 through 2012. *See* 7/24/13 N.T. 214.

65. Regarding the Financial Audit for the year ending June 30, 2009, and the financial position of Imani during that fiscal year:

- a. Net assets were \$442,976, down from \$692,879 the previous year, which was about a \$250,000 decrease from the fiscal year ending June 30, 2008. Net assets declined because Imani spent \$5.8 million and yet had only revenue of \$5.5 million. *See* J-18, p. 5; 7/24/13 N.T. 247.
- b. Imani's fund balance had a deficit of \$286,107. *See* J-18, p. 12.
- c. Imani's cash balance was \$159,422, a decrease of \$71,035 from the previous year. *See* J-18, p. 3; 7/24/13 N.T. 249-250.
- d. The audit notes that Imani had not funded the performance reserve fund as required in its through The Reinvestment Fund ("TRF"). *See* J-18, p. 23; 7/24/13 N.T. 251.
- e. The audit also notes that Imani had not paid any principal on its mortgage notes that year. *See* 7/24/13 N.T. 252.
- f. The audit further notes that Imani had entered into a lease agreement with Imani Foundation, Inc. (the "Foundation"). The Foundation was to collect rent from the tenants in the building, remit \$595,000 to Imani, and then Imani was to remit \$470,000 back to the Foundation. *See* J-18, p. 24; 7/24/13 N.T. 254-254.

66. Regarding the Financial Audit for year ending June 30, 2010, and the financial position of Imani during that fiscal year:

- a. Net assets were \$200,512, down from \$442,976 the year before, which was a decrease of \$242,464 from the end of the previous fiscal year. *See* J-19, p. 4; 7/24/13 N.T. 255.
- b. Imani had an operating deficit of \$(242,464) at the end of the fiscal year. *See* J-19, p. 4; 7/24/13 N.T. 256.
- c. Imani's fund balance decreased to a negative \$158,776. *See* J-19, p. 9; 7/24/13 N.T.257.
- d. Imani's cash balance was \$292,563, an increase of \$133,141 from the previous year. *See* J-19, p. 3; 7/24/13 N.T. 257.
- e. The performance reserve fund was not funded in 2010, *see* J-19, p. 18, and Imani had not made any principal payments on the TRF loan. *See* 7/24/13 N.T. 258-259.
- f. The audit refers to "other receivables" in the amount of \$86,000 but does not identify the source of the other receivables. *See* J-19, p. 7; 7/24/13 N.T. 278.

67. Regarding the Financial Audit for year ending June 30, 2011, and the financial position of Imani during that fiscal year:

- a. The net assets decreased by \$332,123, to \$(160,886) from \$171,237 in 2010. *See* J-20, p. 4; 7/24/13 N.T. 224.
- b. Imani's fund balance was \$(267,424). *See* J-20, p. 9; 7/24/13 N.T. 263.
- c. The cash balance was \$249,885. *See* J-20, p. 9; 7/24/13 N.T. 263.
- d. Imani did not fund the performance reserve fund in 2011, *see* J-20, p. 20, and it did not pay down any of the principal on the TRF loan. *See* 7/24/13 N.T. 264.
- e. The audit refers to "other receivables" in the amount of \$337,307 but does not indicate the source of these receivables. *See* J-20, p. 7; 7/24/13 N.T. 278.

68. Regarding the Financial Audit for year ending June 30, 2012, and the financial position of Imani during that fiscal year:

- a. Imani's net assets were \$(767,188), a decrease of \$606,302 from the previous year, which also indicates that Imani had an operating deficit for the year. *See* J-21, p.4; 7/24/13 N.T. 265.

- b. The fund balance was \$(494,777). *See* J-21, p. 8; 7/24/13 N.T. 265.
- c. Imani's cash balance was \$214,687. *See* J-21, p. 8; 7/24/13 N.T. 266.
- d. Imani also did not fund the performance reserve fund during the 2011-12 school year. *See* J-21, p. 17. In addition, it did not make any principal payments on the TRF loan. *See* 7/24/13 N.T. 268.
- e. The Foundation did not pay Imani any rent during the fiscal year. *See* 7/24/13 N.T. 276-77; SD-11.
- f. The audit also shows "other receivables" in the amount of \$788,362. The audit does not indicate the source of these other receivables. *See* J-21, p. 6; 7/24/13 N.T. 278.

69. Data in the CPA statements from Siegal & Drossner shows the financial position of Imani during the 2008 charter term to be as follows:

Fiscal Year	2008-09	2009-10	2010-11	2011-12
Operating Deficit	\$(249,903)	\$(242,464)	\$ (332,123)	\$ (606,302)
Net Assets	\$442,976	\$200,512	\$(160,886)	\$(767,188)
Debt ratio	0.95	0.98	1.02	1.08
Expenditure/	1.04	1.04	1.05	1.09
Current Ratio	0.56	0.84	0.82	0.81
Quick Ratio	0.45	0.73	0.81	0.80

70. James Cella ("Mr. Cella"), an accountant and Chief Financial Officer for Omnivest Properties Management ("Omnivest") testified on behalf of Imani regarding Imani's finances. *See* 7/24/13 N.T. 323-337. Mr. Cella is not a CPA. *See* 7/24/13 N.T. 336. Omnivest has a contract for business services with Imani and has been providing budgeting, financial reporting, accounts receivable, accounts payable and cash management services for Imani, as well has coordination with Imani's external auditors, since 2008. In addition, Omnivest has been performing services for the Iman Foundation since 2008. *See* 7/24/13 N.T. 324, 337.

71. On or about August 23, 2007, Imani entered into a Loan Agreement with The Reinvestment Fund NMTC Fund, IV, LP ("TRF"), wherein Imani borrowed \$7,500,000 from TRF. Said amount was advanced to Imani through a Senior Note in the amount of \$6,150,000 and a Subordinate Note in the amount of \$1,350,000. *See* 7/24/13 N.T. 234-37; SD-4-6.

72. The Senior Note and Subordinate Notes both have maturity dates of August 22, 2024, which equates to a term of seventeen (17) years. *See* 7/24/13 N.T. 243-44; SD-5 and SD-6.

73. The Loan Agreement between Imani and TRF contains a debt service coverage ratio, which is a covenant that guarantees that Imani will have certain funds available to make the payments required under the loan. A debt coverage service ratio is calculated by subtracting the expenses from the revenue, and then subtracting the debt service payments. If Imani is unable to meet the debt service coverage ratio, TRF could require Imani to pay the principal balance of the loan. *See* 7/24/13 N.T. 238-239; SD-4.

74. The debt coverage service ratio required by the Loan Agreement is set forth in Paragraph 6.15 and states as follows: "6.15 Debt Service Coverage Ratio. The Borrower's Debt Service Coverage Ratio shall be not less than 1.10 to 1.00 at the end of the Borrower's fiscal years, commencing with the fiscal year ending June 30, 2008." *See* SD-4, p. 19.

75. Mr. Krain calculated Imani's debt service coverage ratio and found that it was 1.080084 for the year ending June 30, 2011 and 1.0603130 for the year ending June 30, 2012. *See* 7/24/13 N.T. 291-292; SD-15.

76. Mr. Cella admitted in an email to the School District that the debt service coverage ratio was less than 1.10 to 1.00. *See* SD-8.

77. Failure to maintain the debt service coverage ratio required by the Loan Agreement could result in TRF declaring Imani to be in default of the Loan Agreement. *See* SD-4, ¶¶ 6.15, 9.1(g).

78. OAS requested Imani to produce any waivers issued by TRF regarding the failure of the debt service coverage ratio to conform with the Loan Agreement. No written waivers were provided to OAS. *See* 7/24/13 N.T. 298; 7/30/13 N.T. 291.

79. Robin Eglin ("Mr. Eglin") is the President of Omnivest and has been providing financial advisory services to Imani since August 2006 and helped Imani obtain financing through TRF to acquire their property. *See* 7/24/13 N.T. 337-348. Mr. Eglin is not a CPA. *See* 7/24/13 N.T. 352.

80. Mr. Eglin testified that it was his understanding that the Subordinate Note with TRF secured to purchase Imani's property "gets forgiven at the end of the note." Mr. Eglin testified: "Well, they just give you the note. There is nowhere in the document that says it's forgiven. It is just handed back to the borrower and it goes away" because that is the "nature of the tax credit financing." *See* 7/24/13 N.T. 348-349. Mr. Eglin, however, acknowledged that the Loan Agreement and Notes do not contain any language that the Subordinate Note will be forgiven. Mr. Eglin did not have any written documentation from TRF that states that the Subordinate Note would be forgiven in its entirety. *See* 7/24/13 N.T. 353-354; SD-6.

81. Sarah Vernon Sterman ("Ms. Sterman") is the Chief Lending Officer for TRF. *See* 7/30/13 N.T. 272-286. Ms. Sterman testified about the terms of the Loan Agreement and TRF's relationship with Imani as follows:

- a. TRF has not issued any written waivers to Imani with respect to the debt service coverage ratio. *See* 7/30/13 N.T. 291.

- b. TRF has the sole discretion whether to call in Imani's loans, and it has not made any determinations as whether the notes would be called on or after September 30, 2013. *See* 7/30/13 N.T. 286.
- c. Ms. Sterman testified that Mr. Eglin was incorrect when he testified that the subordinate loan would be forgiven after seven years. If the loan was called, Imani would be required to pay the entirety of the senior note plus 50% of the subordinate note, which amounts to \$6.825 million. *See* 7/30/13 N.T. 287-293; SD-4.
- d. TRF has the right to call Imani's loans on or after September 30, 2013. *See* 7/30/13 N.T. 286; SD-4. If TRF exercises the call, Imani would have 90 days to pay the call price. Imani would have to pay \$6.825 million dollars within those 90 days or obtain refinancing for that amount in order to satisfy the call. *See* 7/30/13 N.T. 289, 293; SD-4.
- e. Ms. Sterman does not know if Imani would be able to obtain financing if TRF exercises the call option. *See* 7/30/13 N.T. 289.

82. Imani entered into a lease agreement with Imani Foundation, Inc. ("the Foundation"), a related entity. Under the terms of the lease agreement, the Foundation was supposed to be collecting rent from the tenants in the buildings owned by Imani, remitting \$595,000 to Imani and Imani was to pay \$470,000 back to the Foundation each year. *See* 7/24/13 N.T. 253-54; J-18, Note 8.

83. During his testimony, Mr. Cella admitted that Imani had not received the \$595,000 in rent due from the Foundation during each of the 2010-11, 2011-12 and 2012-13 school years. *See* 7/24/13 N.T. 341-42.

84. The failure of the Foundation to make the rental payments to Imani is a concern because the Foundation is keeping funds due to Imani. According to the 990 forms filed by the Foundation, the Foundation has negative equities and cannot make the payments to Imani. *See* 9/26/13 N.T. 460-461. The Foundation's 990 forms for fiscal years ending June 30, 2011 and 2012 indicate that the Foundation's net assets are negative in each year. *See*

7/24/13 N.T. 286, 345; SD Ex. 13.

85. Not only was the Foundation not paying rent to Imani under the Lease Agreement, but Mr. Cella also admitted that since the 2010-2011 school year, Imani has not been making the scheduled rental payments to the Foundation. *See* 7/24/13 N.T. 343.

86. The scheduled rent payments from Imani to the Foundation, in the amount of \$470,000 each year, were not included in Imani's General Ledger as an account payable. *See* 7/24/13 N.T. 281-82.

87. The inclusion of the \$595,000 each year as receivables inflates Imani's income by \$125,000 (the difference between the \$595,000 due and the \$470,000 liability). As a result, Imani's current ratio and quick ratio also appear higher than they actually are. *See* 7/24/13 N.T. 282-283; SD Ex. 12. When the rental payment is removed from the General Ledger, Imani's assets in 2012 would decrease from \$2,179,855 to \$1,589,855. In addition, the current liabilities would decrease from \$2,706,734 to \$2,236,734. The result is that the current ratio would drop from 0.81 to .71, an even higher risk ratio for Imani. *See* 7/24/13 N.T. 284-285; SD. Ex. 9. The "other receivables" has increased approximately \$700,000 since 2010. *See* 7/24/13 N.T. 278; J-19 to J-21.

88. The financial audits performed for Imani do not mention the fact that Imani had not received over \$1.7 million dollars in rent from the Foundation for the last three years. *See* 7/24/13 N.T. 343.

89. Mr. Krain testified: "[Imani] is basically being pumped up by these lease agreements that have no transactions and the CPA didn't address them in the [financial] statements, did not address the issue that there is no cash, there's no payments, there's no -- what do you want to call it -- nobody is abiding by their contract agreements for lease payments

between Imani Foundation and the Charter School." *See* 7/24/13 N.T. 283-84.

90. The Loan Agreement also requires Imani to deposit into a performance reserve fund 40% of the net operating income from the operation of the school each fiscal year, starting with the fiscal year ending June 30, 2008. *See* 7/24/13 N.T. 234-37; SD-4-6. Imani has never deposited any money into the performance reserve fund because it has never had any operating income in any year since the Loan Agreement was entered into.

91. As indicated in each of Imani's audits, Imani has not yet made any principal payments on the \$7.5 million loaned to it by TRF. *See* J-18 to J-21.

92. The failure of Imani to make any principal payments on the mortgage notes from TRF affects the depreciation of the building, and at the end of the 2011-2012 school year, Imani's capital assets were valued less than what it owes on the principal on the two mortgages. *See* 7/24/13 N.T. 287-290; SD-21.

CONCLUSIONS OF LAW

1. The Charter School Law, Act of June 19, 1997, P.L. 225, No.22, 24 P.S. §§ 17-1701-A, *et seq.*, governs the application process, the approval process, the revocation and renewal of charters, and the operation of charter schools in Pennsylvania.

2. The General Assembly's intent when it enacted the Charter School Law was to, *inter alia*: (1) "improve pupil learning"; (2) "increase learning opportunities for all pupils"; (3) "encourage the use of different and innovative teaching methods"; and (4) "hold the schools established under this act accountable for meeting measurable academic standards and provide the school with a method to establish accountability systems." 24 P.S. § 17-1702-A. *See also Renaissance Charter School*, CAB No. 2008-07, p. 5.⁶

⁶ All citations to decisions of the State Charter School Appeal Board ["Appeal Board"] are made with

3. 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 school application, which is incorporated into its charter by operation of law. 24 P.S. § 17-1720-A(a); *Graystone Academy Charter School*, Docket No. CAB 2012-01, pp. 30-35.

4. "Because the charter school application is required by the Charter School Law to be extremely detailed and specifically identify the manner in which the charter school will operate (*see* 24 P.S. § 17-1719-A) and because the information contained in the charter school application eventually becomes part of the charter itself, the information in the charter school application is intrinsic to the charter and is essentially the heart of the charter school." *Thurgood Marshall Academy Charter School*, CAB No. 2001-5, p.11.

5. "A charter school shall participate in the Pennsylvania State Assessment System as provided for in 22 Pa. Code Ch. 5 (relating to curriculum), or subsequent regulations promulgated to replace 22 Pa. Code Ch. 5, in the manner in which the school district in which the charter school is located is scheduled to participate." 24 P.S. § 17-1715-A(8).

6. Charter schools are required to comply with the student performance standards set forth in Chapter 4, which are the regulations promulgated by the State Board of Education to replace Chapter 5. 24 P.S. § 17-1729-A(a)(2); *Sugar Valley Rural Charter School*, CAB No. 2004-04, p. 9.

7. In Pennsylvania, the performance standards associated with the No Child Left Behind Act are found in 22 Pa. Code Ch. 4, 22 Pa. Code Ch. 403 and the Pennsylvania Consolidated State Application Accountability Workbook ("Accountability Workbook"), last revised May 12, 2011. *See* SD-15.

reference to their docket number, referenced as "CAB No. __-__." These decisions are publicly available on PDE's website at the following link: [http://www.education.pa.gov/K-12/Charter%20Schools/Pages/CAB-
Decisions.aspx#.VyC3EkbD9D-](http://www.education.pa.gov/K-12/Charter%20Schools/Pages/CAB-Decisions.aspx#.VyC3EkbD9D-)

8. Section 17-1728-A, 24 P.S. § 17-1728-A, regarding "Annual reports and assessments" provides, in relevant part:

- a. The local board of school directors shall annually assess whether each charter school is meeting the goals of its charter and shall conduct a comprehensive review prior to granting a five (5) year renewal of the charter. The local board of school directors shall have ongoing access to the records and facilities of the charter school to ensure that the charter school is in compliance with its charter and that requirements for testing, civil rights and student health are being met.
- b. In order to facilitate the local board's review and secretary's report, each charter school shall submit an annual report no later than August 1 of each year to the local board of school directors and the secretary in the form prescribed by the secretary.

9. Pursuant to 24 P.S. § 17-1729-A(a), a school district may revoke 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. 24 P.S. § 17-1729-A(a)(1).
- 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. 24 P.S. § 17-1729-A(a)(2).
- c. Failure to meet generally accepted standards of fiscal management or audit requirements. 24 P.S. § 17-1729-A(a)(3).
- d. Violation of provisions of this article. 24 P.S. § 17-1729-A(a)(4).
- 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. 24 P.S. § 17-1729-A(a)(5).
- f. The charter school has been convicted of fraud. 24 P.S. § 17-1729-A(a)(6).

10. The Charter School Law places the burden of proof on the School District of Philadelphia to present substantial evidence to substantiate its reasons for non-renewal of

a charter. *See* 24 P.S. § 17-1729-A(c); *Renaissance Charter School*, CAB Docket No. 2008-07, p. 3.

11. "The CLS requires a district, before terminating a charter, to produce substantial evidence in support of its findings; if a district cannot meet this burden, it may not terminate a charter school's charter. Additionally, the reasons for terminating a charter must be compelling in the sense that a charter school's violations of the terms of its charter or the CSL are significant, material and fundamental." *Renaissance Charter School*, CAB Docket No. 2008-07, p. 3 n. 3.

12. The school board must give notice of nonrenewal of the charter to the governing board of the charter school, which notice must state the grounds for such action with reasonable specificity and must give reasonable notice of the date on which a public hearing concerning the written nonrenewal will be held. 24 P.S. § 17-1729-A(c).

13. The school board must conduct a hearing, present evidence in support of the grounds for nonrenewal stated in its notice and give the charter school reasonable opportunity to offer testimony before taking final action. 24 P.S. § 17-1729-A(c).

14. The school board must take formal action regarding the nonrenewal of a charter school at a public meeting pursuant to the Act of July 3, 1986 (P.L. 388, No. 84) known as the "Sunshine Act," after the public has had thirty (30) days to submit comments to the school board. All proceedings of the school board pursuant to this subsection are subject to the Local Agency Law, 2 Pa. C.S. Ch. 5 Subchapter B. 24 P.S. § 17-1729-A(c).

15. The School District complied with the procedural requirements of the Charter School Law set forth at 24 P.S. § 17-1729-A(c) by providing notice, conducting a hearing, presenting evidence in support of the grounds for revocation, and providing for public

comment and prior to adopting its decision.

16. The School District has provided substantial evidence that Imani has committed a material violation of the conditions, contained in its written charter in that it failed to make annual yearly progress (“AYP”) in each of the years of its 5-year term.

17. The School District has provided substantial evidence to demonstrate that Imani has failed to meet the requirements for student performance.

18. The School District has provided substantial evidence to demonstrate that Imani failed to meet generally accepted standards of fiscal management and audit requirements.

19. The mismanagement of a charter school's finances is an appropriate reason to refuse to renew or to revoke the charter of the school. *Ronald H. Brown Charter School*, CAB No. 2005-08 (revocation/nonrenewal upheld where charter school had general fund deficit for 3 years and failed to make interest payments on interest-only note to management company); *Thurgood Marshall Academy Charter School*, CAB No. 2001-5 (fiscal mismanagement sufficient to support revocation where charter school, *inter alia*, overspent its budget by over \$140,000 and placed itself in budget deficit of over \$50,000); *Creative Educational Concepts Charter School*, CAB No. 1999-15 (revocation upheld where charter school operated at a loss).

20. The record in this proceeding supports the nonrenewal of Imani's charter.

21. The School District has met its burden of producing evidence that substantiates one or more of the grounds for nonrenewal set forth in Section 1729-A of the Charter School Law.

II. STANDARD OF REVIEW

The standard of review applied by CAB in its consideration of appeals from school district denials of charter school applications under 1717-A(i)(6) is *de novo*. Section 1729-A(c) requires the School District to "produce evidence in support of the grounds for revocation or nonrenewal stated in its notice and give the charter school reasonable opportunity to offer testimony. . . ." 24 P.S. § 17-1729-A(c); *see also Renaissance Academy of Pittsburgh Alternative of Hope Charter School*, CAB No. 2007-03 ("CSL places the burden of proof on [the school district] to present evidence to substantiate its reasons for nonrenewal"); *Thurgood Marshall Academy Charter School*, CAB No. 2001-5 at 16 (record contained "substantial evidence" supporting termination of the charter); *Einstein Academy Charter School*, CAB No. 2002-6 at 35 (findings of fact by school district "are . . . supported by substantial evidence in the record"); *Creative Educational Concepts Charter School*, CAB No. 1999-15 at 13 (school district's finding was supported by "substantial evidence").

"[T]he 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." *Graystone Academy Charter School*, CAB No. 2012-01, at 38. The preponderance of the evidence standard is satisfied if "the evidence demonstrates a fact is more likely to be true than not to be true, or if the burden were viewed as a balance scale, the evidence in support of the proponent's case must weigh slightly more than the opposing evidence." *Id.* (quoting *Se-Ling Hosier, Inc. v. Margulies*, 70 A.2d 854, 856 (Pa. 1950)).

In its brief, Imani argued that a higher evidentiary standard than "preponderance of the evidence" applies because of the word "compelling" in the *Renaissance Charter School* opinion. *See* Petitioner's Brief, pp. 51-52, citing *In Re Renaissance Charter School*, CAB Docket

No. 2008-07, p. 3 (2008). Imani contends that in order for nonrenewal to be justified, the reasons for terminating a charter must be compelling in the sense that a charter school's violations of the terms of its charter or the CSL are significant, material and fundamental. To the extent Imani is suggesting that an evidentiary standard of "compelling evidence" must be satisfied in order to justify nonrenewal, CAB rejects this suggestion because the burden of proof is clearly "preponderance of the evidence."

In *Renaissance Charter School*, CAB said "the reasons for terminating a charter must be *compelling* in the sense that a charter school's violations of the terms of its charter or the CSL are significant, material and fundamental." *Id.* The requirement that a violation of a charter or the CSL be "significant, material and fundamental" is simply a materiality threshold, not a determinant of burden of proof required. For example, poor academic performance is a "compelling reason" for nonrenewal, but "compelling evidence" is not required to establish the existence of poor academic performance. Only a preponderance of the evidence is required to establish it or any other violation of a charter or the CSL. *See Graystone Acad. Charter Sch. v. Coatesville Area Sch. Dist.*, CAB No. 2012-01, at 38 (Aug. 2, 2013).

III. DISCUSSION

A. IMANI HAS NOT PROVEN ANY PROCEDURAL VIOLATION OF THE CHARTER SCHOOL LAW.

Imani argues that the SRC's decision to nonrenew should be overturned because the School District violated the procedural requirements for renewal in the CSL by failing to conduct a comprehensive review. *See e.g.*, Imani's brief to Hearing Officer Yu, Nov. 11, 2013, p. 3 ("As a result, the failure to perform an annual assessment results in the failure to conduct a comprehensive review of the charter school."). Imani does not state how the law compels the relief

it seeks -- reversal of the nonrenewal decision -- because of this alleged failure.

Section 17-1728-A of the CSL regarding "Annual reports and assessments" provides in relevant part:

(a) The local board of school directors shall annually assess whether each charter school is meeting the goals of its charter and shall conduct a comprehensive review prior to granting a five (5) year renewal of the charter. The local board of school directors shall have ongoing access to the records and facilities of the charter school to ensure that the charter school is in compliance with its charter and this act and that requirements for testing, civil rights and student health and safety are being met.

(b) In order to facilitate the local board's review and secretary's report, each charter school shall submit an annual report no later than August 1 of each year to the local board of school directors and the secretary in the form prescribed by the secretary.

24 P.S. §§ 17-1728-A(a) & (b). Section 17-1728-A(a) describes the obligations of the local board of school directors with respect to assessments of each charter school. Section 17-1728-A(b), on the other hand, imposes the obligation on each charter school to submit an annual report each year to the local board of school directors.

Imani argued that "[annual assessments are] meant to 'facilitate the local board's review' and [are] integral to the 'comprehensive review prior to granting a . . . charter.'" Imani's brief to Hearing Officer Yu, p. 3. Imani alleged that the School District's failure to annually assess Imani constituted a failure by the School District to conduct a comprehensive review. *Id.*

Imani's contention that the School District was required to conduct annual assessments in order to "facilitate the local board's review" misconstrues Section 17-1728-A(a) & (b). Contrary to Imani's contention, it is the *charter school's* submission of an annual report that facilitates the local board's review under Subsection (b), not any assessment conducted by the local board as set forth in Subsection (a).

Imani's argument here is simply not supported by the unambiguous language of Section 17-1728-A(a). Imani contends the School District must conduct an annual assessment, and because an annual assessment was allegedly not performed, the School District is somehow precluded from not renewing Imani's charter. This position is plainly not supported by Section 17-1728-A(a) because that subsection requires the School District to do two *separate* things: (1) to annually assess whether each charter school is meeting the goals of its charter;⁷ and (2) to conduct a comprehensive review prior to granting a renewal of a charter. Therefore, the School District's alleged failure to conduct an annual review does not preclude the performance of its wholly separate obligation to conduct a comprehensive review prior to the renewal of a charter.

Moreover, Section 17-1728-A(a)'s provisions about annual reviews make no statements about the *provision* of an annual report to a charter school regarding its annual performance.⁸ Imani argues that the alleged failure to conduct an annual review deprived it of an opportunity to cure an alleged breach of its charter; but there is no provision in the charter or the CSL that requires an annual report to be delivered to a charter school or that the delivery of an annual report to a charter school is a necessary prerequisite to a nonrenewal. In fact, Imani possessed the information relative to the underlying issues in the nonrenewal, namely information about its own academic performance and fiscal condition, and was thus on notice

⁷ The CSL does not explain or describe what a school district is supposed to do to "annually assess whether a charter school is meeting the goals of its charter," such that Imani could argue that the School District did not take some specific action that it was statutorily obligated to do. The record in this case establishes that the School District accessed Imani's annual reports filed with the Department of Education prior to the renewal year, but did not actually create written reports about the charter school's annual performance. *See* J-32.

⁸ We note that the School District acknowledged that its Charter School Policy goes further than the CSL and requires the charter school office to conduct annual assessments of charter schools, *see* Petitioner's brief, pp. 46-48, but that fact: (1) does not equate to a requirement imposed under the CSL; and (2) does not mean the School District cannot meet its wholly separate obligation to conduct comprehensive reviews when required.

of its own performance and condition even before the School District was. In addition, Imani has not provided any applicable authorities in support of that claim.

We also reject Imani's claim that the School District's failure to annually assess Imani impairs the record before us. *See* Petitioner's brief, p. 49. Imani comes to this conclusion by improperly equating annual reports (which are required to be submitted by charter schools to local boards) with annual assessments (which local boards are required to conduct). Under Section 1729-A(d) of the CSL, the CAB may consider "the charter school plan, annual reports, student performance and employe [sic] and community support for the charter school in addition to the record." Section 1729-A(d) makes no reference to any assessments, annual or otherwise, that CAB may consider in addition to the record.

Thus, contrary to Imani's arguments, we conclude that the procedural requirements of the CSL for nonrenewal, set forth at 24 P.S. § 17-1729-A(c), have been satisfied. The School District provided Imani notice of the grounds for nonrenewal; both the School District and Imani had ample opportunity to present testimony and evidence over the course of six days of hearings held between July 23 and September 26, 2013, and the requisite public comment period was provided.

B. IMANI FAILED TO MEET THE REQUIREMENTS FOR STUDENT PERFORMANCE SET FORTH IN CHAPTER 4 OF THE STATE BOARD OF EDUCATION REGULATIONS.

One of the enumerated grounds for nonrenewal or revocation of a charter is "[f]ailure to meet the requirements of student performance set forth in 22 Pa. Code Ch. 5 (relating to curriculum) or subsequent regulations promulgated to replace 22 Pa. Code Ch. 5" *See* 24 P.S. § 17-1729-A(a)(2). In 1999, Chapter 5 was replaced with Chapter 4 of the State Board of Education's current regulations. *See* 22 Pa. Code Ch. 4; *Sugar Valley Rural Charter School*,

CAB No. 2004-04 at 9. Section 4.51 of Chapter 4 describes the State assessment system and states, in pertinent part:

- (a) The State assessment system shall be designed to serve the following purposes:
 - (1) Provide students, parents, educators and citizens with an understanding of student and school performance consistent with the No Child Left Behind Act of 2001 (Pub. L. No. 107-110, 115 Stat. 1425).
 - (2) Determine the degree to which school programs enable students to attain proficiency of academic standards under § 4.12 (relating to academic standards).
 - (3) Provide results to school entities for consideration in the development of strategic plans under § 4.13 (relating to strategic plans).
 - (4) Provide information to State policymakers including the General Assembly and the Board on how effective schools are in promoting and demonstrating student proficiency of academic standards.
 - (5) Provide information to the general public on school performance.
 - (6) Provide results to school entities based upon the aggregate performance of all students, for students with an Individualized Education Program (IEP) and for those without an IEP.

22 Pa. Code § 4.51(a).

"Pennsylvania's performance standards are associated with the [No Child Left Behind Act ("NCLB")] and are found in 22 Pa. Code Ch. 4, 22 Pa. Code Ch. 403, and Pennsylvania Consolidated State Application Accountability Workbook In order to comply with the mandates of NCLB, PDE developed the Accountability Workbook, which has been approved by the United States Department of Education. The requirements set forth in the Pennsylvania accountability system apply to all public schools, including charter schools. 22 Pa. Code § 403.3(a)." *New Hope Academy Charter School v. City of York School District*, CAB No. 2012-13 at 26. "Chapter 4 . . . sets forth the PSSA as the measure of student and school performance and sets standards of performance to be measured by the PSSA, including proficiency." *Career Connections Charter High School v. School Dist. of Pittsburgh*, 91 A.3d 736, 741 (Pa.

Cmwlth. 2014). "Proficiency as measured by PSSA test scores is therefore a Chapter 4 student performance requirement." *Id.*

The SRC found that the academic performance of Imani students did not meet the performance requirements set forth in Chapter 4 of the State Board of Education regulations and, as set forth below, we agree. Imani, *inter alia*: (1) failed to make AYP in every year under review; (2) had PSSA proficiency scores in reading and math that were consistently lower than State targets, the School District average, and the Charter School average; and (3) had academic growth standards, based on PVAAS, that did not meet the State's growth standard in math and reading. *See* Ex. J-1, pp. 1-2.

Although Imani's academic data for 2012-2013 showed some improvement from the prior year, the academic data for 2013-2014 showed a significant decline in performance. Viewed as a whole, we find that it is clear that Imani's academic performance does not show sustained or consistent improvement as required under the standard we set forth in *New Hope*.

1. Imani did not make AYP in 2010-2011 and 2011-2012 and was in School Improvement I status in 2012-13.

Imani did not achieve AYP in 2010-2011. *See* J-7, p. 1. As a result, it entered Warning status following that school year. *Id.* In 2011-2012, Imani again did not achieve AYP and entered School Improvement I status following the 2011-2012 school year. *Id.* PDE stopped calculating AYP after the 2011-2012 school year. In light of Imani's repeated failure to meet AYP, under Section 1729-A(a)(2) of the CSL, we find that the SRC properly based its nonrenewal decision on Imani's failure to meet the performance standards of the CSL. *Truebright Sci. Acad. Charter Sch. v. Philadelphia Sch. Dist.*, 115 A.3d 919, 921-22 (Pa. Cmwlth. 2015); *Graystone Academy Charter School v. Coatesville Area School District*, 99 A.3d 125, 139 (Pa. Cmwlth. 2014).

2. The academic achievement of Imani students on the PSSA does not warrant renewal of the Charter.

The Commonwealth Court has held that a "consistently low percentage of students scoring proficient or better on the PSSA constitutes a failure to satisfy Chapter 4 student performance requirements and is a valid ground for nonrenewal . . . where the charter school's proficiency rates are lower than those of its school district's schools as a whole and no clear pattern of significant improvement in its PSSA results is shown." *New Hope Academy Charter School v. School District of the City of York*, 89 A.3d 731, 737 (Pa. Cmwlth. 2014); accord *Career Connections*, 91 A.3d at 741.

The specifics of Imani's academic performance in the six-year period from 2009 to 2014 are clearly delineated in the factual findings made by the SRC and adopted by CAB and in the supplemental exhibits jointly presented by the parties. In summary, for the years 2008-2009 through 2013-2014, Imani's percentage of students scoring proficient or better on the PSSA tests in Math were 44.8, 47.2, 50, 41.7, 56.93 and 45.21, respectively. See SD Ex. 2; SD Ex. 20 at 6. All told, these percentages show a lack of improvement over the entire period given that the score from the 2013-2014 school year is virtually the same as the score for the 2008-2009 school year. Clearly Imani has not shown consistent or sustained improvement in Math.

In reading, for the years 2008-2009 through 2013-2014, Imani's percentage of students scoring proficient or better on the PSSA tests were 54.1, 46.2, 48.5, 42.5, 45.96, and 44.52, respectively. *Id.* Again, these percentages are fairly flat and show no improvement over the entire period, with Imani's students scoring almost 10% lower in the 2013-14 school year than they had been in 2008-2009.

For the years 2008-2009 through 2013-2014, Imani's percentage of students scoring proficient or better on the PSSA tests in Science were 51, 51, 51, 47, 53.75, and 42.71,

respectively. *See* Ex. J-6, pp. 5, 7; SD Ex. 20 at 6. Again, the scores in Science, like those in Math and Reading, fail to show improvement. Finally, in writing, for the years 2008-2009 through 2013-2014, Imani's percentage of students scoring proficient or better on the PSSA tests were 44, 56, 56, 46, 64.70 and 74.74, respectively. *Id.* This is the only subject area in which Imani has shown sustained improvement, although there was a dip in the 2011-2012 school year. However, these gains in writing do not overcome the lower scores and stagnation in the other three subject areas.

The Pennsylvania performance targets for the years 2008-2009 through 2011-2012 were: (1) Math, 2009 and 2010 – 56%; 2011 – 67%; 2012 – 78%; (2) Reading, 2009 and 2010 – 63%; 2011 – 72%; 2012 – 81%. *See* J-25, pp. 31-32. Comparing Imani's scores to these targets, it is clear that Imani's academic performance in neither Math nor Reading has met the Pennsylvania targets in any year since 2008. *See* 7/23/13 N.T. 164-65; Ex. J-25 at 31-33; Ex. SD-2. In contrast, Imani argues that its improvement in *one year* (2012-2013) is sufficient to make nonrenewal unjustified. *See e.g.*, Petitioner's brief, p. 54. However, the data shows that this improvement was short lived and that Imani's academic performance quickly went right back to its pre-improvement level of underperformance.

- **SPP Building Level Score**

In the 2012-2013 school year, PDE created a new metric for measuring academic achievement, the SPP and Federal Designation system, which was approved by the USDOE and replaced AYP in Pennsylvania. The SPP is a system that incorporates various data points including raw test scores on the PSSA and Keystone Exams (as applicable), PVAAS scores as well as a host of other measurable factors such as graduation rates and Advanced Placement

Test scoring. The system generates a SPP Building Level score on a 1-100 scale⁹ with certain scoring intervals being tiered into classifications. However, the information that is analyzed to create the Building Level score such as the academic achievement data of students in Reading and Math is also reported.

In the two years SPP has been used, Imani has scored in the third lowest classification in 2012-2013, with a Building Level Score of 74, and in 2013-2014, that score decreased to 59, a drop of 20% to the lowest classification. *See* SD Ex. 20 at 6.

- **SPP-Reported Proficiency Numbers in Math, Reading and Science**

Imani's 2013 percentage of students proficient or better in Math was 57, but in 2014, that percentage fell to 45, a drop of 21%. In Reading, Imani's 2013 percentage of students proficient or better was 46, but in 2014, that percentage fell by 2% to 45. Lastly, the percentage of Imani students scoring proficient or better in Science was 54 in 2013 and that dropped 20% to 43 in 2014.

Although the SPP data does not include data broken down by grade, data is reported in SPP for 3rd grade Reading. Imani's data indicated that from 2012-2013 to 2013-2014 the advanced or proficient performance of Imani's 3rd graders fell from 53% to 47% (both in the lowest percentile group). Imani's students were thus not consistently improving their performance in 3rd grade.

- **PVAAS Growth Data**

Whatever growth Imani students showed in the 2012-2013 school year, that growth was not sustained in the 2013-2014 school year. In the 2013-2014 school year, Imani received a

⁹ More information on this and other facets of SPP can be found at:
<http://paschoolperformance.org/FAQ>

score of 50.00 in the Math Indicators of Academic Growth/PVAAS component, falling in the lowest performing SPP category and indicating that Imani did not meet the Pennsylvania growth standard in Math. *See* SD Ex. 20 at 6. In the 2013-2014 school year, Imani received a score of 53.00 in the Reading Indicators of Academic Growth/PVAAS component. *Id.* That percentage fell in the lowest performing SPP category and indicates that Imani did not meet the Pennsylvania growth standard in Reading. *Id.* In the 2013-2014 school year, Imani received a score of 58.00 in the Science Indicators of Academic Growth/PVAAS component. *Id.* That percentage fell in the lowest performing SPP category and indicated that Imani did not meet the Pennsylvania growth standard in Science. *Id.*

The data is clear: The improvement seen in 2012-2013 was a blip on the radar. When viewed in connection with the data from the prior and later years, CAB concludes that the improvement appears only as an aberration and not as evidence of consistent improvement. The facts in this case are similar to those in *Truebright Science Academy Charter School*, CAB No. 2013-11, in which CAB upheld charter nonrenewal. In that case, the School District instituted nonrenewal proceedings based, *inter alia*, on Truebright's poor academic performance in 2012. CAB upheld the nonrenewal and found that Truebright's failure to make AYP in two of the five years of its Charter, failure to come close to meeting the State's academic performance targets in Math and Reading, and failure to show significant gains in its Reading and Math proficiency scores all were grounds for nonrenewal. *Id.*, at 17-18. In comparison to Imani's proficiency scores, Truebright's scores at the time of nonrenewal were quite similar to those of Imani's at that time. *See Truebright Sci. Acad. Charter Sch. v. Philadelphia Sch. Dist.*, 115 A.3d 919, 921-22 (Pa. Cmwlth. 2015), reargument en banc denied (June 24, 2015). CAB also discredited Truebright's improvement in its Math proficiency from 2007-08 to 2011-12 as still being "well

below the state goals." *Truebright*, at 923.

3. Imani has not consistently outperformed other School District schools to warrant renewal.

Imani attempts to use selected comparison data in an effort to show that its performance was better than other School District schools and other charter schools, such that nonrenewal would not be justified. These efforts, however, fail to meet the standard set forth in *New Hope*. In *New Hope*, the Commonwealth Court held that “if a charter school’s academic performance, even though poor, is *consistently superior to the school district’s results*, it could be contrary to the purposes of improving learning and providing students a proper education to deny charter renewal based solely on the charter school’s test scores.” *New Hope Academy Charter School*, 89 A.3d at 740 (emphasis added). However, as the record shows, Imani’s academic performance was not consistently superior to the School District’s performance; and thus, just as in *New Hope*, nonrenewal in this case is justified on that basis.

Analyzing the comparison data in the record, the following conclusions can be made which undisputedly establish that Imani's performance has not been consistently superior to the other schools within the School District:

- In every year from 2009 to 2012, the aggregate percentage of Imani students who scored advanced or proficient in Math and Reading on the PSSA was substantially lower than the School District and charter school averages, with one exception – Reading scores in 2009. *See Yu’s Findings*, 61.
- More Imani students scored in the Below Basic category in Math and Reading than the School District average or the charter school average from 2009 to 2012, with one exception – Reading scores in 2012. *See Yu's Findings*, 63.

Imani inappropriately focuses mainly on whether the School District as a whole, or neighborhood schools or other charter schools made AYP prior to the 2012-2013 school year, without putting evidence into the record regarding what the actual performance (percentage of students proficient or advanced) and student growth data were in those schools in the years in question. *See* Petitioner's brief, pp. 13, 17-18, Nos. 58, 59, 71, 75. Imani asserts that its own poor performance and failure to make AYP should be excused because other schools also failed to make AYP. But, as in other contexts, CAB rejects such a comparison as a relevant determinant of Imani's satisfaction of student performance requirements. *Cf., Renaissance Academy of Pittsburgh Alternative of Hope ("RAPAH") Charter Sch., CAB No. 2007-03, at 15* (wherein CAB rejected the charter school's attempt to compare its fiscal deficiencies to the fiscal instability of the school district). We find that this reasoning is also persuasive with respect to student performance requirements, because whether or not another charter school or district school failed to make AYP in one particular year should not excuse Imani's failure, nor does that one fact paint a full and complete picture of the totality of circumstances surrounding the school in question. *Cf., Lighthouse Cyber Charter Sch., CAB No 2008-04, at 5-6* ("What PDE did in the case of another cyber charter application is neither relevant nor dispositive on appeal.")

The above notwithstanding, even these school comparisons do not support the proposition that Imani's performance is an insufficient basis for nonrenewal. Imani cites five neighborhood schools in the Philadelphia School District (Pastorius, Roosevelt, Emlen, Wister and Kelly) as comparisons. *See* Petitioner's brief, pp. 16-17, Nos. 73, 76. Those 5 schools are out of 164 district schools (noncharters) with any combination of grades K-8¹⁰ in the School District of

¹⁰ Imani is a K-8 school.

Philadelphia. Imani admits that 2 of the 5 neighborhood schools (Pastorius and Kelly) had higher SPP Building Level Scores in the 2013-2014 school year compared to Imani. *See* Petitioner's brief, pp. 17, No. 76. One of the five schools (Kelly) outperformed Imani in Reading in the 2011-2012 school-year by almost 10% and performed virtually the same as Imani (41.1% vs. 41.7%) in Math. *See* Petitioner's brief, p. 16, No. 73; SD Ex. 2. In the 2013-2014 school-year, 4 of the schools (Pastorius, Kelly, Wister and Emlen) had better PVAAS growth than Imani in Math, Reading, Science and/or Writing. *See* profiles for each school at <http://paschoolperformance.org>.

By Imani's own admissions, the four schools that had lower proficiency scores compared to Imani in the 2011-2012 school year (Pastorius, Roosevelt, Emlen and Wister) were neighborhood schools that only about 20% of Imani's student body *might* have otherwise attended, had they not been enrolled at Imani (compare number of students from these schools at Imani with Imani's enrollment of over 450 students). *See* Petitioner's Brief, pp. 16, 56; SD Ex. 20 at 6. This limited data certainly does not establish Imani's performance to be "consistently superior to the school district's results." *New Hope*, 89 A.3d at 740.

In addition Imani relies on Black Subgroup data primarily to argue that the performance of its black students was better than black students in the School District's schools. *See* Petitioner's Brief, p. 53. Such a limited focus on one subgroup was not condoned by the Commonwealth Court in *New Hope* or the other cases interpreting the student performance requirements of the CSL, particularly since Imani – and all other public schools – are charged with educating every student who seeks to enroll. Further, Imani's own evidence related to subgroup data is dated, meaning Imani did not put into evidence or make any findings about subgroup performance in 2012-2013 or, most importantly, 2013-2014, the year that Imani's overall performance dipped back to

levels that were, almost across the board, worse than the performance of Imani's students in the 2008-2009 school year.

Imani's academic performance from 2009 to 2012 and even in the last few years violates the Chapter 4 academic performance requirements and NCLB requirements. The sporadic and inconsistent improvements in Math, Reading and Science proficiency over the course of those six years are not significant enough to warrant a renewal of Imani's Charter, particularly in light of Imani's performance during the 2013-2014 school year. Thus, we agree with the School District's findings in this regard and find that Imani is not meeting performance requirements and the intent of the General Assembly when it enacted the CSL.

C. IMANI FAILED TO MEET THE STUDENT PERFORMANCE STANDARDS IN ITS OWN CHARTER.

The SRC's nonrenewal of Imani's charter was also based upon the school's failure to meet a performance goal set forth in a school's own charter. In its charter, Imani agreed to make AYP and the "PVAAS growth measure consistent with the [PDE's] Accountability System pursuant [sic] NCLB" for "each year" of its five-year charter term and that its failure to do so would constitute "grounds for nonrenewal" of the charter. *See* J-5, pp. 15-16. Based upon the record, CAB finds it to be undisputed that Imani failed to make AYP in 2010-2011 *and* 2011-2012. Thus, under Section 17-1729-A(a)(2) of the CSL, we find that the SRC properly based its nonrenewal decision on Imani's failure to meet a performance standard in its charter. *See Truebright Science Academy Charter School v. Philadelphia Sch. Dist.*, 115 A.3d 919, 921 (Pa. Cmwlth. 2015), citing *Graystone Academy Charter School v. Coatesville Area School District*, 99 A.3d 125, 139 (Pa. Cmwlth. 2014) (rejecting charter school's assertion that its stated goal regarding student performance was an objective and not a mandate and holding that the school's failure to meet its performance goal was a ground for charter revocation).

Imani also failed to meet the requirements in its Charter relative to PVAAS growth. Undisputed evidence in the record shows that Imani students did not meet the Pennsylvania standard for academic growth in Reading or Math in 2011-2012 and 2013-2014 school-years. *See* J-14; J-15; SD Ex. 20 at 6. The failure to meet the Charter requirement relative to growth measures, we agree, serves as additional support for the nonrenewal decision.

In the *Truebright* case, CAB upheld nonrenewal of Truebright's charter based upon its failure to comply with the academic performance standard in its charter with the School District, which required Truebright to make AYP during the term of its Charter, similar to the case with Imani. Because Truebright did not make AYP for two of the five years of its Charter, CAB found that a Charter requirement had not been met; and nonrenewal, based upon that failure, was justified. We find that there is thus no question that the School District met its burden of establishing that Imani failed to meet the performance requirements in its Charter and that such a failure is a sufficient basis for nonrenewal under 24 P.S. § 17-1729-A(a)(2).

D. IMANI FAILED TO MEET GENERALLY ACCEPTED STANDARDS OF FISCAL MANAGEMENT.

The SRC's decision to nonrenew was also based upon Imani's financial management and health. The SRC found that Imani did not meet generally accepted standards of fiscal management for the following reasons, *among others*:¹¹ (1) Imani owes the entire principal balance of a \$7.5 million dollar loan and may have been in danger of defaulting on a provision requiring a Debt Service Coverage Ratio; (2) Imani was a party to a "highly suspect" Lease

¹¹ The "others" are all of the factual findings and conclusions reached by Hearing Officer Yu in the Findings and Recommendation and other evidence in the record, including the following: findings relative to the operating deficits, deficit net asset and deficit fund balance position of Imani over multiple years and Imani's failure to timely make payments to PSERS on multiple occasions over the course of the 2008 Charter. *See* Recommendation, pp. 24-25; 9/26/13 N.T. 455-456; SD Ex. 17.

Agreement with the Imani Foundation, Inc.; (3) Imani carried a negative fund balance; and (4) Imani ran operating deficits. The School District's position was that Imani's fiscal performance prior to nonrenewal did not meet generally accepted standards of fiscal management for all the reasons found by Hearing Officer Yu and stated in her report. *See* Yu Findings of Fact, 85-117; Conclusions of Law, 20-23; Discussion, pp. 44-48. We adopt all the findings and conclusions reached by the SRC in this regard.

There are other reasons supporting a finding that Imani did not meet generally accepted standards of fiscal management or audit standards that arose after the close of the record in this case. First, Imani's audited financial statement for the year ending June 30, 2013 was filed on May 13, 2014; and, in accordance with 24 P.S. § 2-218(b), it should have been filed no later than December 31, 2013. Imani's audited financial statement was thus filed over four months late.

In addition to the late filing of its audited financial statement, Imani took various steps -- after the initial close of the record -- to make its financial position look better presumably in response to the institution of the nonrenewal proceedings. Those steps, however, had the opposite of their intended effect. They are further evidence of Imani's failure to meet generally accepted standards of fiscal management.

One step Imani took was to change its depreciation method for its building. Changes in accounting estimates, such as an estimate of the service life and salvage value of depreciable assets, are governed by Governmental Accounting Standards Board ("GASB") No. 62, Paragraphs 69 and 83-85, and should be accounted for only in the period of change or the period of change and future periods, and not in restated amounts for prior periods. *See*, <https://GASB Statement 62>. Paragraph 83 of GASB No. 62 states as follows:

The effect of a change in accounting estimate should be accounted for in (a) the period of change if the change affects that period only or (b) the period of change and future periods if the change affects both. A change in an estimate should not be accounted for by restating amounts reported in financial statements of prior periods or by reporting pro forma amounts for prior periods.

For the seven years preceding the June 30, 2013 audit, Imani had depreciated its school building based on a 25-year depreciation schedule. After the nonrenewal proceedings began, however, Imani decided to change the depreciation to a 45-year useful life, thus resulting in a significant decrease in the amount of depreciation each year. The result of this depreciation adjustment was an increase in the value of Imani's net assets for the year ending June 30, 2012 by \$654,426.00. *See* SD Ex. 21, at 8. This adjustment, however, simply reduced but did not eliminate Imani's fiscal year deficit.

GASB No. 62, Paragraph 87 states: "The financial statements of the period of a change in the reporting entity should describe the nature of the change and the reason for it." *See* <https://GASB Statement 62> at 37. The 2013 audited financial statements do not disclose what occurred during that time period to cause the decision to be made to change the useful life of Imani's building from 25 to 45 years for depreciation purposes. The 25-year useful life of the building had been approved and used since 2007 by Imani's management and accountants, Imani's Board and its external auditors (J. Miller & Associates and its predecessor, Siegel and Drossner).

Regarding the audited financial statements for the year ending June 30, 2013 and the financial position of Imani during that fiscal year, Net Position¹² was still at a deficit (\$132,018), even after restated amounts from 2012. *See* SD Ex. 21 at 5. Had Imani's beginning net position not been restated and had it not increased by \$645,426, Imani's year-end net position would have been in a deficit position of (\$777,444) factoring in the 45-year depreciation

¹² The term "net assets" was changed to "net position" by GASB, effective for periods after December 15, 2011, through GASB Statement 63.

change. If the 25- year depreciation method had remained, the deficit position would have been larger.

The audit for the period ending June 30, 2013¹³ notes that Imani had not funded the performance reserve fund as required in one of its loans. *See id.* at 18. Imani also did not make any principal payments on its mortgage notes that year. *See id.* at 18-19.

Regarding the audited financial statements for the year ending June 30, 2014 and the financial position of Imani during that fiscal year: Imani's year-end net position was \$133,084. *See SD Ex. 22* at 4. However, had Imani's beginning net position not been restated and had it not increased by \$645,426 in 2013, Imani's year-end net position in 2014 would have been in a deficit position of (\$512,342). If the 25-year depreciation method had remained, the deficit position would have been larger.

Clearly, in light of Paragraph 83 of GASB statement No. 62 cited above, the restatement of *prior* depreciation adjustments do not comport with generally accepted standards of fiscal management. And we note that *even with the change* Imani wanted, it still had a negative fund balance for the years ending June 30, 2012 and June 30, 2013 and a barely positive fund balance for the year ending June 30, 2014.

In a second step taken to adjust its financial position on September 9, 2014, Imani refinanced its loans with TRF for a new loan in the amount of \$6,725,000 at a fixed interest rate of 5.29% per year. The note is payable in 23 monthly installments of principal and interest with interest being calculated over a twenty-year amortization period beginning October 1, 2014. An additional principal payment of \$150,000 is payable on July 1, 2015 and July 1, 2016 and a balloon payment of all outstanding principal and interest through September 30, 2016. *See SD*

¹³ This audit report was to be issued by the end of 2013, but was belatedly issued on May 13, 2014. *SD Ex. 21* at 3.

Ex. 22, at 17. Imani's financial statements provide *no information* as to how Imani will be able to make the enormous balloon payment due on September 30, 2016.

In its brief, Imani argues that the valuation of its building is incorrect and that the "bookkeeping requirement" of depreciation should not be reflected in the value of the building in the financial statements. *See e.g.*, Petitioner's brief, p. 68. That position is not in accordance with GASB. As the School District auditor Mr. Krain testified, under GASB 34 the financial statements are *required* to reflect the value of assets by taking historical costs less depreciation. *See* Tr. 7/24/13, pp. 288-90. There are no other methods allowable to a charter school or otherwise allowed to be used in the valuation of a building. *Id.* at p. 288.

Another action taken after the close of the record that affects Imani is the dissolution of the Imani Foundation. The Foundation filed Articles of Dissolution with the Commonwealth of Pennsylvania Department of State on December 11, 2014. *See* CS Ex. 22. The Articles of Dissolution provide, in part, that "[a]ll liabilities of the corporation have been discharged." *Id.* In light of the facts found by Hearing Officer Yu, this is a peculiar event. *See* Yu Findings of Fact, 107-114. All debts that were owed by the Foundation to Imani are no longer receivables of Imani, and those very receivables were propping up Imani's net asset position. *See id.* at 112 (when the Foundation's rental payment is removed from the General Ledger, Imani's assets in 2012 would decrease from \$2,179,855 to \$1,589,855; the current liabilities would decrease from \$2,706,734 to \$2,236,734; the current ratio would drop from 0.81 to 0.71, an even higher risk ration for Imani). Mr. Krain testified about how the receivables were benefitting Imani's asset position: "[Imani] is basically being pumped up by these lease agreements that have no

transactions¹⁴ and the CPA didn't address them in the [financial] statements, did not address the issue that there is no cash, there's no payments, there's no -- what do you want to call it -- nobody is abiding by their contract agreements for lease payments between Imani Foundation and the Charter School.” *See id.* at 114 (citation omitted).

The dissolution of the Foundation occurred on December 11, 2014. Imani's 2014-15 school year audit has not yet been released, and it was not due until December 31, 2015. However, Imani's independent financial audit for the 2013-2014 school year was released approximately eight (8) days after the formal dissolution, but the subsequent events discussed in the audit do not recognize that the dissolution of the Foundation had already occurred. Nor does the December 11, 2014 audit address whether any of the receivables/payables related to rents due to and from the Foundation are “good debts.” These rents remain included in the audit’s calculation of net position.

These are additional financial matters that, *when viewed in conjunction with the finance-related findings made by Hearing Officer Yu and adopted by the SRC, and the evidence in the record*, clearly demonstrate the continued substantial instability of Imani’s fiscal operations. The School District has, therefore, we find, met its burden of proving that Imani failed to meet the generally accepted standards of fiscal management and audit requirements mandated by Section 17-1729-A(a)(3) of the CSL. This too is a sufficient basis under the CSL for charter nonrenewal.

IV. CONCLUSION

For the foregoing reasons CAB finds that the SRC's nonrenewal of Imani's Charter was proper under the CSL; and it is affirmed.

¹⁴ The Foundation was not paying rent to Imani and Imani was not paying amounts due to the Foundation. *See Yu Findings of Fact*, 108-111.

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

Imani Education Circle Charter School,	:	
Petitioner,	:	
	:	
v.	:	Docket No. CAB 2014-08
	:	
School District of Philadelphia,	:	
Respondent.	:	

ORDER

AND NOW, this 11th day of May, 2016, in accordance with the vote¹⁵ of this Board at its meeting of December 9, 2015, it is hereby ordered that the appeal of the Imani Education Circle Charter School is **DENIED**; and the nonrenewal decision of the School District of Philadelphia is **AFFIRMED**, to be effective June 22, 2016.

/s/ Pedro A. Rivera
Pedro A. Rivera, Chair

¹⁵ At its December 9, 2015 meeting, the Board voted to deny the appeal with members Rivera, Miller, Peri and Yanyanin voting to deny and members Cook and Munger voting to grant. Board Member Bracey was absent and did not participate in the vote.