



Revocation Notice contained 12 charges, including among others: failure to meet the requirements for student performance, failure to meet regulations governing children with disabilities, and failure to meet generally accepted standards of fiscal management or audit requirements. (Jt. Exh. 4).

A single record on the amendment and revocation before a hearing officer appointed by the School District was developed at hearings on January 21 and 22, 2016 and February 2, 5, 8, and 9, 2016. (*See* N.T.).<sup>1</sup> Following a 30-day public comment period and briefing, the Board of Directors of the School District voted to deny, in part, I-LEAD's Amendment Request on May 18, 2016. (May 24, 2016 Litts Letter). The Adjudication regarding the Amendment Request ("Amendment Adjudication") denied the requests to replace the academic goals, to clarify the independence of I-LEAD, Inc. from I-LEAD, and to specify that I-LEAD shall comply with the Sunshine Act and Highly Qualified Teacher requirements, and offer compliance training regarding the Sunshine Act and the Ethics Act. The Board of Directors voted to revoke the charter on May 25, 2016. The Board adopted final Adjudications in both matters.

On June 16, 2016, I-LEAD filed a Petition of Appeal of the Denial of the Amendment Request with CAB. (HO-1). On June 23, 2016, it filed a Petition for Appeal of the Revocation of its Charter. (HO-2). By letters dated July 11, 2016, CAB appointed a hearing officer to preside over all preliminary matters in the appeals and to certify the record to CAB for purposes of final adjudication. (HO-3; HO-4). An August 16, 2016 Scheduling Order established a deadline of September 16, 2016 for any motion to supplement the record and "any other

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<sup>1</sup> References to the exhibits introduced before the hearing officer appointed by the School District below will be referenced as "Jt. Exh. \_\_\_" or "CS Exh. \_\_\_" or "SD Exh. \_\_\_." All "N.T." references are to the transcript before this hearing officer. References to the School District's hearing officer markings will be "HO Below- \_\_\_." CAB's hearing officer exhibits are "HO-\_\_\_."

necessary motions.” This Order consolidated the cases for “motions, briefing, and oral argument.” (HO-11).

On January 3, 2017, the Hearing Officer decided two motions: one by I-LEAD to supplement the record with certain enumerated classes of documents, and one filed by the School District to supplement the record with information from the Pennsylvania Department of Education (“PDE”) relative to the performance of I-LEAD and the School District in school year 2015-2016. (HO-22). I-LEAD’s motion was denied in its entirety, and the School District’s motion was granted. I-LEAD was given ten days from January 3 to request supplementation limited to the new PDE progress information admitted to the record upon request of the School District or to request a hearing “spelling out exactly what would be presented at hearing and the reason that a hearing is necessary.” (HO-22, p. 11).

On January 12, 2017, I-LEAD timely appealed the January 3 Order to CAB. (HO-25). In addition to the appeal of the January 3 Order, I-LEAD timely moved to supplement the record with the 2016 School Performance Profile (“SPP”) released on or about October 27, 2016 of the Citadel Intermediate High School, which is located in the Reading School District. (HO-27). This supplement is identical in format and type to the information which was admitted into the record upon request of the School District.

By Order of February 15, 2017, the Hearing Officer granted this motion to supplement the record with the 2016 SPP of the Citadel Intermediate High School. (HO-38). The School District filed an Appeal of the Hearing Officer’s February 15, 2017 Order with the CAB on February 17, 2017. (HO-40). Both parties filed timely briefs on all issues. (HO-42, 43, 44). On May 2, 2017, the Hearing Officer certified the record. (HO-45). CAB heard oral argument on May 16, 2017.

On June 13, 2017, CAB voted to grant I-LEAD's appeal from the revocation of its charter by the School District and also voted to grant I-LEAD's amendment request in this consolidated appeal. While the opinion was being prepared, the Pennsylvania Supreme Court issued an opinion in *Discovery Charter School v. School District of Philadelphia*, 166 A.3d 305 (Pa. 2017). The Court, for the first time, considered whether CAB had jurisdiction to hear denials of charter amendments. The Court held that the Charter School Law does not provide CAB with jurisdiction to hear denials of charter amendments. Prior to the issuance of a written decision consistent with the vote on June 13, 2017, the School District filed a Petition to Reopen the amendment appeal based upon the decision in *Discovery*.<sup>2</sup> However, during the briefing of the Petition to Reopen, I-LEAD decided it no longer wanted to pursue its appeal of the denial of its charter amendment, and submitted a Notice of Withdrawal. CAB accepted I-LEAD's Notice of Withdrawal. As such, the only remaining issue is the appeal related to the revocation of I-LEAD's charter.

For the reasons set forth below, CAB holds that the School District does not have sufficient legal grounds to justify its revocation of I-LEAD's Charter under Section 1729-A of the CSL, 24 P.S. §17-1729-A.

## **I. FINDINGS OF FACT**

1. I-LEAD is a Pennsylvania nonprofit corporation and charter school organized and operating under the CSL, 24 P.S. §17-1701-A, *et seq.*, with its principal place of business located at 401 Penn Street, Reading, Pennsylvania 19601. (SD Exh. 1, 2, 3; CS Exh. 8, p. 4).

2. I-LEAD actively recruits students who are "at-risk" for dropping out of school or failing, and enrolls students who are pregnant, have been adjudicated by the courts, are truant,

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<sup>2</sup> A vote by CAB is not final until a written decision is issued. *See* 24 P.S. § 17-1729-A(d); *see also Pocono Mountain Charter School v. Pocono Mountain School District*, 88 A.3d 275, 288-289 (Pa. Cmwlth. 2014).

and/or have significant issues that impede their ability to function in a traditional school setting. (N.T. 192-195; *see also* CS Exhs. 4, 7, 8).

3. The Reading School District is a school district of the third class, organized and operating under the Pennsylvania School Code, 24 P.S. §1-101, *et seq.*, with its principal offices located at 800 Washington Street, Reading, Pennsylvania 19601.

4. In 2010, I-LEAD was granted a charter by the School District for a three-year period commencing July 1, 2011 for a school year beginning September 6, 2011. (N.T. 107; Jt. Exh. 7).

5. The School District renewed I-LEAD's charter in October 2013 for a five-year term beginning July 1, 2014. (Jt. Exh. 8).

6. The renewal term was the period from July 1, 2014 through June 30, 2019. (Jt. Exh. 8).

7. No new charter agreement was proposed following the renewal vote. A charter agreement was proposed by the School District in August of 2014, nearly ten months after the School District renewed the charter. (Jt. Exh. 2).

8. On June 5, 2015, counsel for I-LEAD received a letter from the School District's counsel which threatened revocation proceedings against I-LEAD if I-LEAD refused to agree to several proposed charter terms. (Jt. Exh. 3).

9. By letter dated June 15, 2015, I-LEAD, through counsel, responded to the June 5, 2015 letter. (Jt. Exh. 1, at Exh. F). While I-LEAD stated that it believed that the June 5, 2015 letter proposed a number of unnecessary and unrealistic terms and provisions, it agreed to sign a charter agreement containing the proposed terms to avoid the expense of defending against

revocation. (Jt. Exh. 1, at F (“[T]he [Charter] School is prepared, albeit under duress, to sign the charter agreement as proposed in your letter.”; *see* N.T. 123).

10. I-LEAD filed with the School District a Request for an Amendment to its Charter on September 21, 2015. (Jt. Exh. 1).

11. Just two days after the Request for Amendment was filed, the Reading Board of School Directors approved Resolution 7.10 dated September 23, 2015, which initiated revocation proceedings against I-LEAD. (Jt. Exh. 4).

12. On December 16, 2015, the Board of School Directors appointed a Hearing Officer. (HO Below - 3).

13. On January 9, 2016, the Reading School District published notice of a public hearing regarding the amendment request and the revocation proceedings. (HO Below -1).

14. Hearings were held on both matters on January 21 and 22, 2016 and February 2, 5, 8, and 9, 2016 at Reading School District administration offices in Reading, Pennsylvania. (*See* N.T.).

15. A 30-day public comment period began on February 11, 2016. Nine hundred and eighty-seven (987) letters, emails or other written communications were submitted in support of I-LEAD by the March 14, 2016 submission deadline. A CD-ROM of these letters, petitions and other communications was provided to the parties' attorneys and the School Board, and entered into evidence by the Hearing Officer below. (HO Below-6).

16. These letters included 44 letters from community members including a State Representative, a State Senator, a County Commissioner, members of the Reading City Council, and parents of students at I-LEAD. (HO Below-6).

17. On March 23, 2016, each party filed proposed findings of fact, conclusions of law and memoranda of law in connection with both the Amendment Request and the Revocation.

18. On May 18, 2016, by a 7 to 2 vote, the School District adopted an Amendment Adjudication which granted in part and denied in part the Amendment Request as follows:

1. the request to replace the existing measurable academic goals within the existing charter with new ones to assess the performance of the Charter School's student populations is **denied**;
2. the request to specify in its existing charter that the I-LEAD Charter School shall operate out of facilities located [at] 401 Penn Street, Reading, PA is **granted**;
3. the request to specify in its existing charter that the I-LEAD, Inc. [Institute for Leadership Education, Advancement and Development, *See* CS Exh. 33, p. 2] board members shall not serve on the Charter School's Board of Trustees is **granted** only to the extent to [sic] the existing charter specifies that the board of directors [of] I-LEAD, Inc. shall be the Charter School's Board of Trustees, and any other remaining portions of this particular request are **denied**;
4. the request to specify in its existing charter information regarding the relationship between the Charter School, I-LEAD, Inc. and/or its employees is **denied**;
5. the request to specify in its existing charter that the Charter School shall comply with the Sunshine Act and offer compliance training regarding the Sunshine Act and Pennsylvania's Ethics Act is **denied**.

(Amendment Adjudication, p. 22; May 24, 2016 Litts Letter).

19. On May 25, 2016, the Board of School Directors voted by a 7 to 2 vote to revoke I-LEAD's charter, adopting the Hearing Examiner's Proposed Adjudication in its totality, based upon Charges 1 and 2 and their subparagraphs set forth in School Board Resolution 7.10. (*See* Revocation Adjudication, at 31; May 31, 2016 Litts Letter).

20. Charge 1 from the Revocation Adjudication was "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 standards set forth in the written charter.” (Revocation Adjudication at p. 2).

21. Charge 2 from the Revocation Adjudication was “violations of provisions of the Charter School Law and/or any provisions of law from which the charter school has not been exempted, including federal laws and regulations governing children with disabilities.” (Revocation Adjudication at p. 3).

22. I-LEAD's student enrollment figures were as follows:

- a. **2011-2012 school year:** The initial enrollment was 205 students but increased to 400 students by the end of this school year. (CS Exh. 3 p. 5; CS Exh. 4, p. 3);
- b. **2012-2013 school year:** Approximately 330 students started the school year and that number ultimately grew to 400 students by the end of this year. (Jt. Exh. 12, CS Exh. 3, pp. 5, 23);
- c. **2013-2014 school year:** Approximately 425 students were enrolled in this school year. (Jt. Exh. 15; CS Exh. 7, p. 30);
- d. **2014-2015 school year:** Approximately 520 students were enrolled during this school year. (N.T. 286-287, 802-803); and
- e. **2015-2016 school year:** Approximately 520 students were enrolled during this school year as well. (N.T. 286-287, 376).

Charge 1: Failure to meet the requirements for student performance set forth in Chapter 4 of the State Board of Education regulations and its own charter.

23. The School District operates Reading Senior High School (“RSHS”) which serves approximately 3,500 students in the tenth through twelfth grades. (N.T. 431, 434).

24. I-LEAD did not make Adequate Yearly Progress (“AYP”) during the 2011-12 school year. (N.T. 490; Jt. Exh. 9; p. 8). RSHS was in its sixth year of “corrective status” for AYP in 2011-12. (N.T. 556-557).

25. AYP, based upon one PSSA (an 11<sup>th</sup> grade assessment), is no longer used as a basis for the performance of a school. (N.T. 554).

26. Beginning with the 2012-2013 school year, PDE introduced a new building-level metric to measure academic achievement called the School Performance Profiles ("SPP"), which was approved by the U.S. Department of Education and replaced AYP. (N.T. 437; *see also, Imani Education Circle Charter School v. School District of Philadelphia*, Docket No. CAB 2014-08 (2016) at 33-34 (explanation of the SPP system)).

27. The SPP uses multiple academic measures for which schools receive points based on student performance, student growth, historically underperforming student movement, graduation and attendance, among other things. (N.T. 437-438). PDE publishes information on its website explaining the components of the building level score and how that score is calculated. (Jt. Exh. 11; SD Exh. 10; N.T. 438-439, 531-532).

28. All schools receive an SPP Score, which ranges from a low of 0 to a high score of 100+. PDE would like to see schools score within the category of 70 or higher. (N.T. 503).

29. The SPP profiles for all Title I schools with a high percentage of low-income students also contain a Federal designation of "Priority," "Focus," "No Designation" or "Reward." (N.T. 438). A "Priority" designation means that a school is in the lowest 5% of all Title I schools in Pennsylvania based upon Algebra I and Literature Keystone Exam scores. (N.T. 504). A "Reward" designation means a school is in the highest 5% of all Title I schools in Pennsylvania in terms of progress each year on Algebra I and Literature Keystone Exam scores. (SD Exh. 7; N.T. 517, 532).

30. I-LEAD received a "Priority" designation for the 2012-2013 and 2013-2014 school years. (Jt. Exh. 12 p. 2; Jt. Exh. 15 p. 2).

31. For the 2012-2013 school year, I-LEAD had a SPP score of 35.1 (Jt. Exh. 12 p. 2); and RSHS had a SPP score of 54.5 (Jt. Exh. 14 p. 2).

32. For the 2013-2014 school year, I-LEAD had a SPP score of 33.5 (Jt. Exh. 15, p. 2); and RSHS had a SPP score of 60.2 (Jt. Exh. 17 p. 2).

33. For the 2014-2015 school year, I-LEAD had a SPP score of 40.0 (Jt. Exh. 19, p. 2); and RSHS had a SPP score of 65.2 (Jt. Exh. 20 p. 2).

34. The most recent data available to the School District at the time of the adoption of the Revocation Adjudication in May of 2016 was that for the 2014-15 School Year, I-LEAD had an SPP score of 40.0, an increase of nearly 20% over the 2013-14 School Year. (Jt. Exh. 19).

35. I-LEAD “empowers youth in grades 9-12 who are at-risk or have dropped out of school to be self-sufficient members of the 21<sup>st</sup> Century economy as effective leaders, creative entrepreneurs, and engaged citizens.” This mission statement continues: “leadership, citizenship, academics, and work experience are integrated, and responsibility for learning and leading is shared among youth, the staff, families, and the community.” (CS Exh. 3, p. 5).

36. Ninth grade is a significant year in which students drop-out or get off-track. Because I-LEAD takes ninth-graders, comparing it to schools which do not take ninth-graders such as RSHS, is not a reasonable comparison with respect to cohort graduation rates. (CS Exh. 26, p. 15).

37. No students have been enrolled in I-LEAD over a five-year timeframe, and therefore it is not possible to make an accurate judgment about the ability of I-LEAD to retain students in school. (CS Exh. 26, pp. 15-16).

Charge 2 from Revocation: Violations of provisions of the Charter School Law and/or any provisions of law which the charter school has not been exempted, including federal laws and regulations governing children with disabilities.

38. In Pennsylvania, a highly qualified teacher (“HQT”) is one who: (i) holds a PDE-issued teaching certificate in a core content area; and (ii) demonstrates subject matter competency within that core content areas. (*See*, PDE Certification and Staff Policy Guidelines entitled “Highly Qualified Determination.”)

39. The percentage of classes taught at I-LEAD by HQTs during the 2015-2016 school year was 73.11%. (HO-18, Exhibit A, p. 1).

40. The average years of teaching experience for teachers at I-LEAD, according to the 2015-2016 SPP report, is 1.79 years. (HO-18, Exhibit A, p. 1).

41. In the 2012-13 school year, 42.1% of I-LEAD's classes were not taught by HQTs. In the 2013-14 school year, 22.47% of I-LEAD's classes were not taught by HQTs. (Jt. Exh. 12, p. 1; jt. Exh. 15, p. 1).

42. I-LEAD showed improvement in the use of HQTs between 2012-13 and 2013-14. (Jt. Exh. 12, p. 1; Jt. Exh. 15, p. 1).

43. Each year, I-LEAD improved the percentage of HQTs teaching its core courses. (Jt. Exh. 4, p. 4; N.T. 294).

44. I-LEAD ended the first year of the current five-year charter term with 100% Highly Qualified Teachers (“HQTs”) as required by the No Child Left Behind Law, and prior to the repeal of the HQT requirement had reached 100% HQTs when based upon permanent employees on staff. (N.T. 294).

45. The Every Student Succeeds Act (“ESSA”) eliminated Highly Qualified Teacher requirements beginning with the 2016-17 School Year. *See* Every Student Succeeds Act (Pub.L.No. 114-95 (Dec. 10, 2015) 129 Stat. 1802, 20 U.S.C.A. §7801.

46. The Revised Application provided that I-LEAD, Inc. Board of Directors would serve as I-LEAD's Board of Trustees ("Charter Board"). (N.T. 136-137).

47. I-LEAD's Bylaws provide, in part, as follows regarding the powers of its governing board:

Article III: BOARD OF TRUSTEES

3.1 **Powers.** The Board of Directors shall be the Board of Trustees as contemplated by the Charter School Law and the Board of Directors under the Pennsylvania Non Profit Corporation Act. The Board shall have the authority to decide all matters regarding the operation and functioning of the corporation, including but not limited to the authority to:

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c. Approve the appointment of a Principal;

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g. Appoint or dismiss school administrators or staff members;

h. Adopt the annual budget and conduct an annual independent audit of the School's finances;

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j. Locate new buildings or change the location;

k. Create or increase indebtedness;

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o. Determine compensation and terms and conditions or employment of administrators, teachers and other employees of the School . . . .

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(Jt. Exh. 26, p. 1; N.T. at 693).

48. I-LEAD became the tenant of I-LEAD, Inc. in October 2013 and began paying rent in the amount of \$33,000 per month to I-LEAD, Inc. on or around August 2014. (Jt. Exh. 30; N.T. 871-72).

49. The August 20, 2014 Board? minutes specifically amended the By-laws to include: "the Facilities Committee shall be appointed by the Chair of the Board, but shall consist only of Board Members that are unaffiliated with I-LEAD, Inc. The Facilities Committee is authorized to act in place of the Board in all matters relating to the physical facilities of this School. The Chair of this Committee shall be selected by its members." (Jt. Exh. 27, p. 8).

50. The I-LEAD Board did not take public steps to approve any transactions or agreements on any matter with I-LEAD, Inc. until the 2015-2016 school year. (See Jt. Exh. 27).

51. Article 3.5 of I-LEAD's Bylaws further states that Charter Board regular meetings "shall comply with the Sunshine Act." (Jt. Exh. 26, p. 2).

52. On February 16, 2015, the School District wrote to I-LEAD requesting copies of various documents, including, but not limited to: (i) Charter Board's meeting minutes "from July 2013 through the current time"; (ii) Statements of Financial Interest filed with I-LEAD in the last 12 months; and (iii) its financial audit for the 2012-2013 fiscal year. (Jt. Exh. 24; N.T. 691).

53. On February 26, 2015, in response to the School District's request, I-LEAD supplied copies of its Board meeting minutes from the following dates: September 26, 2013, March 25, 2014, May 20, 2014, August 20, 2014, September 25, 2014, and December 11, 2014. (Jt. Exh. 27; N.T. 700-701).

54. I-LEAD's Chief Financial Officer ("CFO"), Barbara Wilkinson-Sykes, testified that the I-LEAD Board typically holds four (4) meetings per year, but that in one year only three meetings were held. (N.T. 797).

55. None of the above-referenced I-LEAD Board meeting minutes, which span almost a 15-month period, reflects that any action was taken on any of the following items: (i) the adoption of an annual budget; (ii) the hiring, removal or setting of compensation terms for any I-LEAD employees; (iii) the approval of a lease for school facilities; or (iv) the acceptance or repayment of loans to finance I-LEAD operations. (Jt. Exh. 27).

56. Ms. Wilkinson-Sykes testified that I-LEAD, Inc. provided I-LEAD with \$1.5 million in interest-free loans during the 2014-2015 school year, and I-LEAD repaid \$890,000 of that amount during that period, (N.T. 807-809); however, she could not find anything in the meeting minutes where the I-LEAD Board approved the loan and/or its repayment. (N.T. 808-809).

57. I-LEAD's Audit for 2013-2014 school year states as follows regarding the loans between I-LEAD, Inc. and I-LEAD:

As has been done in years past, I-LEAD, Inc. provided the School with unsecured interest-free loans during the year for certain expenses paid by the School. Loans in the amount of \$1,500,000 were available to the School throughout 2014, with the largest balance outstanding at any one time being \$450,000. All loan balances were paid off during the year ended June 30, 2014; including \$2,100 due to I-LEAD, Inc. from the year ended June 30, 2013.

The School also incurred expenses which are to be repaid by I-LEAD, Inc. These costs amounted to \$7,593; of this, \$5,541 is due to the School as of June 30, 2014.

(Jt. Exh. 33, p. 11).

58. The 2012- 2013 Audit likewise reflects loans being made from I-LEAD, Inc. to I-LEAD for the payment of start-up costs, with a balance remaining as of June 30, 2013, of \$2,100. (Jt. Exh. 32, p. 12).

59. I-LEAD's audit report for the 2012-2013 school year reported that "the President and CEO of I-LEAD, Inc. serves as the Board Chair of [the Charter School]" and "Two executives of I-LEAD, Inc. serve on the [Charter School] Board." (Jt. Exh. 32, p. 9).

60. On October 2, 2013, Mr. David Castro, then I-LEAD Board Chairperson, executed a one-page lease agreement for I-LEAD to rent space at 401 Penn Street from I-LEAD, Inc. (Jt. Exh. 30, p. 17; N.T. 148). He signed this lease while simultaneously serving as I-LEAD, Inc. President and I-LEAD Board Chairperson. (N.T. 153-155). There is nothing in the I-LEAD Board meeting minutes showing that this lease was approved by a vote of the I-LEAD Board. (See Jt. Exh. 27).

61. I-LEAD and I-LEAD, Inc. entered into a second lease for 401 Penn Street commencing April 1, 2014 and ending June 30, 2015. (Jt. Exh. 30, pp. 1-16). This lease obligated I-LEAD to make payments in excess of \$33,000 per month to ----- beginning August 1, 2014. (N.T. 871-872). There is nothing in the I-LEAD board meeting minutes showing that this second lease was approved by a vote of its board. (See Jt. Exh. 27).

62. None of the loan-related transactions referenced in the 2013-2014 Audit are reflected in the board meeting minutes supplied for the 2013-2014 school year. (Jt. Exh. 27; N.T. 715).

63. I-LEAD's audit report for the 2013-2014 school year was dated March 5, 2015. (Jt. Exh. 32; N.T. 783). Ms. Wilkinson-Sykes testified that the receipt of the final audit report was delayed because the same auditing firm engaged to do auditing for I-LEAD was used by I-LEAD, Inc. (N.T. 783).

64. I-LEAD's audit report for the 2013-2014 school year reported that "[p]ursuant to the [Charter] School's by-laws, I-LEAD, Inc. appoints a majority of the [Charter] School's Board.

Three executives of I-LEAD, Inc. serve on the Board of the [Charter] School...." (Jt. Exh. 33, p. 13).

65. I-LEAD, Inc has not realized a profit from its relationship with I-LEAD. I-LEAD, Inc. has given substantial sums to I-LEAD so that it may fulfill its mission. (CS Exh. 28).

66. In response to the School District's request, I-LEAD provided five Statements of Financial Interest as filed with I-LEAD, Inc. in the 12 months before February 16, 2015. (Jt. Exh. 28).

67. All five Statements of Financial Interests were for I-LEAD Board members and were signed between September 9, 2014 and October 15, 2014. (Jt. Exh. 28). Statements of Financial Interest were supplied by I-LEAD for Dr. Robert Natalini, Philip Thomas, Denise Kirkland-Nash, Robert Jefferson and David Castro. (Jt. Exh. 28).

68. Ms. Kirkland-Nash did not identify I-LEAD, Inc. as a direct source of income on her Statement of Financial Interest. (Jt. Exh. 28, p. 3). She is, however, employed by I-LEAD, Inc. as its Chief Operating Officer or Vice President of Operations. (N.T. 164, 812). Ms. Nash-Kirkland served on the I-LEAD Board until her resignation in June 2015. (N.T. 811-812).

69. At the time the Statements of Financial Interests were provided to the School District, I-LEAD also disclosed the members of I-LEAD's administration to be Dr. Tamara Smith, Chief Academic Officer; Angel Figueroa (CEO/COO); Barbara Wilkinson-Sykes, CFO; and Lizette Flowers, Director of Business and Human Resources. (Jt. Exh. 29).

70. No Statements of Financial Interest were supplied for Mr. Figueroa, Ms. Wilkinson-Sykes, Dr. Smith, Ms. Flowers, or any other person. (N.T. 697-99). Mr. Figueroa testified that he and Ms. Sykes filed Statements of Financial Interest after February 2015. (N.T.

833-34). He did not know exactly when his Statement was filed. (N.T. 859). Mr. Figueroa admitted that, prior to February 2015, he had never filed a Statement of Financial Interest. (N.T. 859). He did not know if Ms. Wilkinson-Sykes had ever filed one prior to February 2015. (N.T. 861-62).

71. Mr. Figueroa has been employed by I-LEAD in various capacities since its inception. He first served as Vice President of Resource Development. In January 2015, he became CEO of I-LEAD. (N.T. 829, 833, 854-58). At all times until June 2015, Mr. Figueroa was also employed by I-LEAD, Inc., as Vice President of Resource Development. (N.T. 829, 856). In June 2015, Mr. Figueroa "phased out" of his I-LEAD, Inc. role. (N.T. 857). He earned approximately \$31,000 from I-LEAD, Inc. and \$72,000 from I-LEAD prior to "phasing out" of his role. (N.T. 856-57). At the time of the hearings before the School Board, Mr. Figueroa earned \$140,000 from I-LEAD. (N.T. 857).

72. Ms. Barbara Wilkinson-Sykes has been the CFO for I-LEAD since its inception. (N.T. 777). Ms. Sykes served as a consultant and then CFO for I-LEAD, Inc. from 2008 until she resigned in August 2015. (N.T. 794-795). Prior to her resignation in August 2015, Sykes earned \$35,000 from I-LEAD, Inc. and \$110,000 from I-LEAD. (N.T. 796).

73. Mr. Philip Thomas served on the I-LEAD Board and resigned in June 2015. (N.T. 161). Mr. Thomas is the Vice-President of Higher Education Programs for I-LEAD, Inc. (N.T. 164).

74. Mr. David Castro served as an I-LEAD Board member from the inception of I-LEAD until June 2015, and he served as Chair of the Board from inception until August 2014. (N.T. 77-78, 154-55). Since June 2015, Castro has served as *pro bono* legal counsel for I-LEAD, providing advice to I-LEAD. (N.T. 77, 153). Castro also works as the Executive Director,

President and CEO of I-LEAD, Inc., positions that he has held for the last 20 years. (N.T. 78, 153).

75. All members of the I-LEAD Board of Trustees filed at least one statement of financial interest during the 2014 school year, the first year of the school's current charter term. (Jt. Exh. 28; N.T. 696-697).

76. I-LEAD has been sloppy with its paperwork, particularly the keeping of minutes of the Board and the filing of Statements of Financial Interest.

77. I-LEAD has shown improvement in the keeping of minutes of the Board and in encouraging its Board Member to file Statements of Financial Interest.

78. I-LEAD Board members, who are personally responsible to file Statements of Financial Interest, have been less than diligent in doing so.

79. I-LEAD has committed no material violations of the Charter School Law sufficient to warrant revocation of its charter.

80. I-LEAD has committed no material violations of federal laws or regulations governing children with disabilities.

81. I-LEAD has committed no material violations of its charter.

## **II. CONCLUSIONS OF LAW**

1. The appeal from the revocation of I-LEAD's Charter is properly before the CAB pursuant to the CSL. 24 P.S. §§17-1717-A(i)(1); 17-1729-A(d).

2. CAB has the authority under the CSL to agree or disagree with the findings of the School District based upon its review of the certified record. 24 P.S. §17-1717-A(i)(6).

3. The CSL, 24 P.S. §§17-1701-A *et seq.*, governs the termination of a charter granted to a charter school by a school district in the Commonwealth of Pennsylvania.

4. Section 1729 of the CSL sets forth the bases upon which a school district's board of directors may terminate a school's charter. 24 P.S. §17-1729-A(a)(1) – (6).

5. In determining whether the revocation of a school's charter was appropriate, CAB shall review the record made in the proceedings below and may supplement the record at its discretion with information that was previously unavailable. 24 P.S. §17-1729-A(d).

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

7. The School District has the burden of proof to present sufficient evidence to substantiate its reasons for nonrenewal/revocation. 24 P.S. §17-1729-A(c).

8. The School District did not meet its statutory obligation of presenting sufficient evidence to substantiate its reasons for nonrenewal/revocation under 24 P.S. §17-1729-A(c).

9. I-LEAD did not fail to meet 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. 24 P.S. §17-1729-A(a)(2).

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 with the school's charter school application which is incorporated into the charter. 24 P.S. §17-1720-A.

11. The Charter School Law allows a school district to terminate a school's charter if the charter school has committed a material violation of the charter. 24 P.S. §17-1729(a)(1).

12. I-LEAD did not fail to meet performance standards set forth in its written Charter. 24 P.S. §17-1729-A(a)(2).

13. I-LEAD did not fail to meet generally accepted standards of fiscal management or audit requirements. 24 P.S. §17-1729-A(a)(3).

14. Following an independent review of the record before CAB, including the supplemental evidence, and after giving due consideration to the findings of the School District, CAB concludes that the record does not support the revocation of I-LEAD's Charter. 24 P.S. §17-1729-A.

### **III. DISCUSSION**

#### **A. Standard of Review**

The Pennsylvania General Assembly enacted the CSL to provide parents and students with expanded choices in the types of educational opportunities that are available within the public school system. It was the intent of the Legislature that charter schools would improve pupil learning, increase learning opportunities for all students and offer diverse and innovative educational techniques while operating independently of the traditional public school system. *See* 24 P.S. §17-1702-A. In addition, the General Assembly intended to hold charter schools “accountable for meeting measurable academic standards,” in order to assure that these schools were accomplishing the goals of the CSL. 24 P.S. §17-1702-A(6). When a charter is granted by a local board of school directors, the charter school is required to comply with the terms and conditions of the charter, as well as the information contained in the charter school application, which is incorporated into the charter. 24 P.S. §§17-1720-A, 17-1729-A(a)(1).

Section 1729-A(a) of the CSL sets forth the causes for nonrenewal and revocation of a charter by a school district. Those causes include:

- (1) One or more material violations of any conditions, standards or procedures contained in the written charter.
- (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.
- (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.
- (6) The charter school has been convicted of fraud.

24 P.S. §17-1729-A(a). In order to legally nonrenew or revoke a charter, a school district must prove that a charter school violated at least one of these provisions.

CAB applies a *de novo* standard of review when entertaining appeals from the denial of a charter school application under Section 1717-A(i)(6). 24 P.S. §1717-A(i)(6); *West Chester Area School District v. Collegium Charter School*, 812 A.2d 1172 (Pa. 2002). The CSL requires that CAB “give ‘appropriate consideration’ to the findings of the local school board, while making an independent determination as to the merits of the charter school application.” *West Chester*, 812 A.2d at 1180. Since the standard of review for appeal of the nonrenewal or revocation of a charter school’s charter is the same as review of a denial of a charter school’s application, *cf.* 24 P.S. §17-1729-A(d) with 24 P.S. §1717-A(i)(6), the review in this appeal is also a *de novo* review.

CAB is required to independently review the findings of the local school board for nonrenewal or revocation of a charter in light of the record while giving “due consideration” to them, and then specifically articulate its reasons for agreeing or disagreeing with those findings.

See 24 P.S. §17-1729-A(d). In other words, after review, CAB has authority either to adopt or to substitute its own findings and independent judgment for that of the local school board. *West Chester Area School District v. Collegium Charter School*, 760 A.2d 452, 461 (Pa. Cmwlth. 2000), *aff'd*, 812 A.2d 1172 (Pa. 2002).

**B. Supplementation of the Record**

Pursuant to the CSL, 24 P.S. §17-1729-A(d), CAB has the discretion to allow supplementary materials which were “previously unavailable.” CAB has no duty to accept additional evidence, and whether or not to accept additional evidence is in its discretion. *Shenango Valley Regional Charter School v. Hermitage School District*, 756 A.2d 1191, 1194 (Pa. Cmwlth. 2000).

The Commonwealth Court has held that the term “previously unavailable” should be construed according to its plain meaning. 1 Pa.C.S. §1903. “Previously” pertains to timing. “In context, ‘unavailable’ means not accessible, unknown, or not discernable with due diligence.” *Pocono Mountain Charter School, Inc. d/b/a Pocono Mountain Charter School v. Pocono Mountain School District*, 88 A.3d 275 (Pa. Cmwlth. 2014). “In addition, the supplemental information ‘must be relevant and probative to CAB’s review. . . .’” *Id.* (quoting *In re: Phoenix Charter School*, Docket No. CAB 2001-06 at 9).

I-LEAD sought to supplement the record with the following:

- a. minutes, and the numerous attachments thereto from the school’s Board of Trustees’ public meetings that occurred on March 23, 2016, April 27, 2016, May 13, 2016, May 24, 2016, June 7, 2016, and June 10, 2016;
- b. a letter, dated September 8, 2016, in support of I-LEAD from Berks County Commissioner Christian Leinbach, addressed to Secretary Rivera;
- c. a letter, dated August 25, 2016, in support of I-LEAD from State Representative Thomas Caltagirone;

- d. Statements of Financial Interest filed by Charter School Board Members and Administrators in 2016;
- e. minutes of the Board of Trustees from its meetings held January 17, 2014 and March 25, 2014; and
- f. a hearing to be scheduled in which David Castro, former Board Chair, will testify regarding the independent committee established by the Board in negotiating the 401 Penn Street lease, and the discussions held at public meetings of the Board regarding all lease transactions.

(HO-14).

The School District wanted to include the final and official versions of the 2015-2016 SPP of schools in the Commonwealth, namely the SPP of I-LEAD and the Reading School District, which were released by PDE on October 27, 2016. (HO-18). The Hearing Officer found, and CAB agrees, that the Minutes and Statements of Financial Interest pertaining to the 2015 calendar year, a year that is different from those Ethics Statements already included in the record, all post-date the timeframe of the hearings before the School District and do not tend to make the facts and legal violations found by the School Board more or less probable than they would be without the evidence. The two letters post-dating both Adjudications are apparently offered as further evidence of community support. The authors of these two new letters already submitted letters of support to the School Board in February, 2016. *See* HO below - 6, Subsection 5, pp. 13, 15.

With respect to presenting additional evidence from Mr. David Castro about the 401 Penn Street lease, a fair reading of the charges and the record below establishes that I-LEAD should have known that one or more lease transactions were directly related to the alleged violation of the Ethics Act. Any documentary evidence or testimony from Mr. Castro about the lease would have been previously available. Because I-LEAD had a full opportunity to present evidence

from Mr. Castro at the hearing below, there was no reason to give I-LEAD another opportunity to do so.

The 2015-2016 SPP of I-LEAD and the Reading School District, which were released by PDE on October 27, 2016, were previously unavailable and are directly relevant to the issue of I-LEAD's academic performance. CAB has considered SPP data in its revocation and nonrenewal cases since the SPP system took effect in Pennsylvania. See *Imani Education Circle Charter School v. School District of Philadelphia*, CAB Docket No. 2014-08 at 33-34; *Community Academy of Philadelphia Charter School v. School District of Philadelphia*, CAB Docket No. 2013-12 at 44-46. This data meets the requirements of section 1729-A(d) of the CSL and the holding in *Community Academy*. Therefore, the SPP data was properly admitted to the record here.

In response to the admission of the SPP data requested by the School District, I-LEAD moved to supplement the record with Citadel SPP information, which was not released until October 2016. (HO-38; HO-39). It could not have been presented in the proceedings at the School District level nor could it have been presented before the Hearing Officer's September 16, 2016 deadline for motions to supplement the record. The Hearing Officer found that the Citadel SPP information was both "previously unavailable" and "relevant and probative" because the information relates to the performance of other schools relative to the performance of I-LEAD. (HO-38). We find no reason to disturb these findings.

On May 9, 2017, well after the record had been certified and just before oral argument, I-LEAD requested to submit I-LEAD's performance on the Winter Keystone Exams in Biology, Algebra I, and Literature. (HO-46)<sup>3</sup>. Because this request was so late and would open another,

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<sup>3</sup> This document was presented after the Hearing Officer certified the record, but it will be marked "HO-46."

entirely new issue of performance comparison, CAB will exercise its discretion not to admit these untimely documents. 24 P.S. §17-1729-A(d).

### **C. Revocation of the Charter**

Section 17-1729-A of the CSL provides the sole basis upon which a chartering school district in the Commonwealth may revoke a charter. 24 P.S. §17-1729-A. The School District revoked I-LEAD's charter for two reasons: (1) it failed to meet the requirements for student performance set forth in Chapter 4 of the State Board of Education regulations and its own charter; and (2) it materially violated other applicable laws, namely the highly qualified teacher requirements, the Sunshine Act, the Ethics Act, and by failing to file Financial Interest Statements or to disclose alleged conflicts of interest. (Revocation Adjudication at 2-3); *see also* 24 P.S. §§17-1729-A(1-2).

#### **Charge 1: Student Academic Performance**

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 Dist. of City of York*, 89 A.3d 731, 737 (Pa. Cmwlth. 2014) (emphasis added).

The SPP is a formula that takes into consideration a variety of data points in measuring a school’s academic performance, including raw test scores on the PSSA and Keystone Exams, academic growth through PVAAS scores, graduation rates, attendance rates, College Board testing, college attendance after graduation, and student achievement in Advanced Placement (AP) testing in Mathematics, Reading/Literature, Science/Biology and Writing. All of these data

elements are evaluated in order to create a “building level academic score” that is used to track achievement for state-level academic accountability. In fact, the SPP has replaced AYP for determining accountability measures.

I-LEAD is unique in that it actively recruits students who are “at-risk” for dropping out of school or failing, and enrolls students who are pregnant, have been adjudicated by the courts, are truant, and/or have significant issues that impede their ability to function in a traditional school setting.

The most recent data available to the School District at the time of the adoption of the Revocation Adjudication in May of 2016 was for the 2014-15 School Year, when I-LEAD had an SPP score of 40.0, an increase of nearly 20% over the 2013-14 School Year. (Jt. Exh. 19).

, CAB rejects the over-simplified comparisons between the student performance on Keystone Exams at I-LEAD and RSHS as reported in SPP documentation given I-LEAD’s focus and mission to educate at-risk students. Further, the record here supports a conclusion that I-LEAD has made substantial improvements in academic performance.

The significant factor in deciding if I-LEAD’s charter should be revoked is whether I-LEAD has shown that it can increase academic performance in those students that it has undertaken to educate—students who are “at-risk” for dropping out of school or failing. In fact, I-LEAD originally applied to provide a charter school to grades 11 and 12. When the School District granted the charter, it added grades 9 and 10. This changed the need to provide comprehensive high school services that the Charter School was not previously prepared to provide. I-LEAD has improved its attendance rates and has significantly increased its enrollment from 205 to 520.

Because PDE includes every student enrolled in a school as part of the graduation cohort, regardless of when the student entered that school, the cohort graduation rates attributable to I-LEAD are misleading. Ninth grade is a significant year in which students drop-out or get off-track. Because I-LEAD takes ninth-graders, comparing it to schools which do not take ninth-graders, such as RSHS, is not a reasonable comparison with respect to cohort graduation rates. No students have been enrolled in I-LEAD over a five-year timeframe and therefore it is not possible to make an accurate judgment about the ability of I-LEAD to retain students in school.

The CSL encourages the establishment of schools to serve a variety of purposes. It was enacted to create a system of independent, mission-driven public schools that operate outside of the school district structure. 24 P.S. §17-1702-A. Our prior interpretation requiring proficient or above proficient achievement on state standardized tests is not wholly applicable to a case in which the Charter School educates students who are dropouts, at significant risk of dropping out, who have been out of the school system, or who have other significant issues that impede traditional learning such as early pregnancy, a history of crime or delinquency, and social-emotional issues. While academic progress is absolutely expected, it is inappropriate to expect exactly the same achievement on standardized tests when the pool of students and the mission of the charter school is so different from the public school. The comparison between I-LEAD, which serves students in grades nine through twelve, is simply not a perfect comparison with the RSHS which serves students in grades ten through twelve. We do not agree with the School District that a different grade configuration is “irrelevant when making that comparison.” Revocation Adjudication, p. 29. Similarly, based upon a review of the evidence, CAB does not agree with the School District that I-LEAD has made “insignificant progress” given its pool of students.

The strong support from community members including a State Representative, a State Senator, a County Commissioner, members of the Reading City Council, and, most especially, parents of students at I-LEAD is also noteworthy. Taken as a whole, I-LEAD provides a service to a significant pool of students in this community and should be given more time to improve its academic performance, especially considering that I-LEAD instituted revocation proceedings only two years into its five-year renewal.

The facts in this record support the conclusion that I-LEAD's students have shown improvement, and CAB believes it should be given additional time because of the at-risk population the charter school serves. Because the legislative mandate of the CSL is to increase learning opportunities for all students and to improve pupil performance of all students, I-LEAD has this statutory obligation to do so. CAB strongly urges I-LEAD to continue on the path of improvement.

Charge 2: Material violations of other applicable laws, namely the highly qualified teacher requirements, the Sunshine Act, the Ethics Act, and the failure to file Financial Interest Statements or to disclose alleged conflicts of interest.

A. Highly Qualified Teacher Requirements

All public schools, through the end of the 2015-2016 school year, were required to have highly qualified teachers ("HQT") teaching core academic subjects. 20 U.S.C. §6319(a)(2). As found by the School Board and based upon the record before us, I-LEAD did not always meet the HQT requirements.

The School District argues as well that the SPP data for the 2015-2016 school year shows that the percentage of I-LEAD classes taught by HQTs in 2015-2016 was 73.11, which means that 26.89% of all core subject area classes were staffed by non-HQTs. (HO-43, p. 35). I-LEAD

asserts that 100% of its permanent teachers were highly qualified during the first year of the current charter term. (HO-42, p. 78, N.T. 294).

Even the School District concedes that these violations alone would not be significant enough to warrant revocation of the charter. (HO-43, p. 34). The employment of HQTs is not a significant, fundamental, or material reason to revoke a charter. *See Renaissance Charter School*, CAB No. 2008-07, at 3 n.3 (2008) which describes the necessary burden of proof. These HQT violations should be considered, but only if they constitute a part of a wider pattern of significant violations of law by I-LEAD will they constitute sufficient evidence to revoke I-LEAD's charter. Therefore, this evidence will be considered along with the evidence of other alleged violations.

#### B. Sunshine Act

The School Board concluded that “the Charter Board violated the Sunshine Act by failing to conduct public business on fundamental operational issues in a manner that complies with this law.” (Revocation Adjudication, at p. 25). Examples of matters that were not addressed in public or acted upon by the Charter Board were the adoption of an annual budget; the expenditure of funds to lease school facilities; the hiring of employees; and the decisions to borrow from I-LEAD, Inc. to pay operating expenses, and the repayment of same. (Revocation Adjudication, at pp. 18-21).

The courts of common pleas, not CAB, have jurisdiction over open meeting challenges for local agencies. The remedy is a legal challenge within thirty days of an alleged violation of the Sunshine Act, 65 Pa. C.S.A. §713. *Graystone Academy Charter School v. Coatesville Area School District*, 99 A.3d 125, 142 (Pa. Cmwlth. 2014). *See also, Pocono Mountain Charter School, Inc. v. Pocono Mountain School District*, 88 A.3d 275, 286 (Pa. Cmwlth. 2014) (citations

omitted). There is no evidence on this record that the School District made such a legal challenge.

I-LEAD's Board held only three to four meetings a year, and the School District introduced copies of every meeting minute supplied by I-LEAD. (Jt. Exh. 27; N.T. 700-701). The Board Minutes admitted into the record show some attempted compliance with the Charter School Law. (Jt. Exh. 27; CS. Exh. 33). Six sets of minutes from the 2013-14 school year and half of the 2014-15 school year do show that: (1) each meeting was advertised in accordance with the notice requirements of the Sunshine Law; (2) the Board discussed and approved financial reports, and the school's financial position on the record at each meeting; (3) the Board created an Executive Committee of the school to handle day-to-day operations and matters arising between meetings of the Board; (4) the Board approved restructuring, employee resignations, and staffing requests from the Executive Committee; and (5) the Board voted on important matters such as amending the by-laws to establish an independent committee for facility negotiations and electing Dr. Natalini as Board chair. (Jt. Exh. 27).

I-LEAD admits to minutes-recording errors in the past and contends that it has worked to correct Sunshine Law violations by receiving training on how properly to record public meeting minutes, and has posted those minutes to its website following each meeting of the Board since the hearings below. The record shows improvement in this area. CAB cannot consider these alleged Sunshine Law violations in determining whether or not I-LEAD's charter should be revoked. CAB is not the proper forum in which to judge these alleged Sunshine Law violations.

### C. Ethics Act

While a single Ethics Act, 65 Pa.C.S. §1101 *et seq.*, violation standing alone does not constitute grounds to nonrenew or revoke a charter, *In re: Renewal Application of Lincoln*

*Charter School*, Docket No. 2005-3 (2005) at 13, serious ones in conjunction with other serious violations do support nonrenewal or revocation of a charter. *Renaissance Charter School*, Docket No. CAB 2008-07 (2009) at 13-14.

The School Board found violations of the “open and public process” requirements in the Ethics Act related to circumstances where there are conflicts of interest, namely the circumstances surrounding the adoption of leases between I-LEAD and I-LEAD, Inc., for the property located at 401 Penn Street. Revocation Adjudication, at 18-21, 27. The School District argues that I-LEAD was on notice as to these allegations, but did not take necessary and appropriate steps to ensure compliance with the Ethics Act.

At issue is the lease between I-LEAD and I-LEAD, Inc., and the actions of I-LEAD’s Board of Trustees. The September 23, 2015 Resolution contains two “charges” for which evidence of the I-LEAD Board’s actions and involvement in lease transactions would be relevant: (1) I-LEAD failed to ensure that its operations are independent from that of its management company and/or vendor, I-LEAD, Inc. (the two entities have common board members and/or administrators and do not have a written contract that delineates each entity’s responsibilities to the other or payment terms); and (2) I-LEAD violated the Charter School Law, the Sunshine Act and its own Bylaws in that decisions relegated to the Board of Trustees are being made by others outside the public realm, “including decisions about budgeting, contracts and leases . . . .” *See* Jt. Exh. 4, p. 4. It is the overlap of board members and administrators involved with both I-LEAD and I-LEAD, Inc. which is the underlying problem. Mr. Castro, a board member who served as President of the Charter Board for some period of time, was one of those individuals.

I-LEAD claims that the lease for 401 Penn Street cannot form the basis of an Ethics Act violation because no benefit accrued to I-LEAD, Inc. as result of that lease. (HO-42, p. 83-84). I-LEAD, Inc. is receiving rent from I-LEAD as a result of the lease, but the evidence shows that the rental arrangement entails I-LEAD, Inc. donating back to I-LEAD any balance remaining after payment of operating costs. (N.T. 871-873; *see also* CS Exh. 28).

The CSL prohibits administrators of a charter school from being compensated by organizations that do business with more than one charter school:

A person who serves as an administrator of a charter school shall not receive compensation from another charter school or **from a company that provides management or other services to another charter school**. The term “administrator” shall include the chief executive officer of a charter school and all other employees of a charter school who by virtue of their positions exercise management or operational oversight responsibilities....

24 P.S. § 17-1715-A(12).

It appears that members of the I-LEAD’s Board engaged in activities which, on their face, may have constituted a conflict of interest had there been a “private pecuniary benefit.” 65 Pa.C.S. § 1103(a). A “conflict of interest” is defined by the Ethics Act as “[u]se by a public official or public employee of the authority of his office or employment or any confidential information received through his holding public office or employment *for the private pecuniary benefit* of himself, a member of his immediate family or a business with which he or a member of his immediate family is associated . . . .” 65 Pa.C.S. § 1102 (emphasis added). Contracts or transactions entered into with businesses associated with public officials must be awarded through an open and public process which is dictated by 65 Pa. C.S. § 1103(f). Such a process includes prior public notice and subsequent public disclosure of all proposals considered and contracts awarded. 65 Pa.C.S. § 1102. It is the State Ethics Commission which has the authority to remedy noncompliance with the Ethics Act. 65 Pa.C.S. § 1107 (15).

There is no evidence that anyone or any entity was actually enriched by this commingling of relationships between I-LEAD and I-LEAD, Inc. I-LEAD, Inc. is a not-for-profit operation. It does not provide management services or any other comprehensive services. There is no evidence in this record that I-LEAD or I-LEAD, Inc. has done business with any *other* charter school in the Commonwealth. The totality of the relationship between I-LEAD, Inc. and I-LEAD can be summed up in two categories: (1) philanthropy, including zero percent interest loans, contributions, and a below-market lease for real estate; and (2) provisions that the Board of Directors for I-LEAD, Inc. will be the Board of Trustees for I-LEAD. The School District did approve an application that specifically placed I-LEAD, Inc. in a supportive role.<sup>4</sup> While the commingling of these entities may appear troubling on its face, the evidence of this commingling is not sufficient to constitute a statutory reason for revocation.

#### D. Financial Interest Statements

The CSL provides that administrators of charter schools are public officials who must comply with the Ethics Act and financial disclosure. 24 P.S. § 17-1715-A(12); 65 Pa.C.S. §1104(a). The Ethics Act requires the filing of Statements of Financial Interest every year by board members and others who are deemed public officials or public employees. 65 Pa.C.S. § 1104(a). The School Board found as a fact that various public officials and employees associated with I-LEAD failed to comply with the Ethics Act by failing to file Statements of Financial Interest, or failing to disclose all direct or indirect sources of income on filed Statements. (Revocation Adjudication, at pp. 22, 26-27).

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<sup>4</sup> The School District notes, however, that the Revised Application for I-LEAD initially disclosed that I-LEAD, Inc.'s board would serve as the Charter Board. There was no indication in the Revised Application that I-LEAD, Inc. would be providing financial assistance to I-LEAD or that employees would be shared between these two entities. The circumstances in 2010, being different, would not have precluded the I-LEAD, Inc.'s board members from serving on I-LEAD's Board.

The School District contends that we should hold I-LEAD responsible for the failure by members of I-LEAD's Board to file Ethics Act statements or to file complete ones. The Commonwealth Court has determined that a failure of a board member to file Ethics Act statements cannot be imputed to the corporation itself because filing is an individual responsibility, not the corporate responsibility of the charter school. *School District of the City of York v. Lincoln Charter School*, 889 A.2d 1286, 1289, note 7 (Pa. Cmwlth. 2006). While CAB can take into consideration this failure in determining governance issues, the charter school cannot be considered "in violation of any law" when considering its revocation under Section 1729-A(a)(5) of the CSL.

With respect to the second charge, as noted above, CAB does not have jurisdiction to hear violations of the Ethics Act and may not impute any alleged Ethics Act violations by individual board members to the charter school. Pointedly, the School District did not pursue any of these alleged violations through the proper channels. Moreover, it apparently knew of some, if not all, of them in October 2013 when it renewed the I-LEAD Charter for an additional five years.

#### **IV. CONCLUSION**

CAB is satisfied that on the record before it, the evidence offered by the School District on the two charges does not constitute a material basis to revoke the charter under Section 1729-A(a)(5). After reviewing the record below, as well as the supplemental information admitted to the record, considering the improvement in student performance in the last several school years, recognizing that I-LEAD provides services to a population that might not otherwise be served, considering the substantial community support for the continuation of the school, and giving due

consideration to the findings of the School District, but disagreeing with them for the reasons set forth above, CAB finds that the record does not support the revocation of I-LEAD's charter.

Therefore, CAB makes the following Order:

