

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

Eastern University Academy Charter School,	:	
	:	
Petitioner	:	CAB Docket No. 2018-04
	:	
v.	:	
	:	
School District of Philadelphia,	:	
Respondent	:	

OPINION

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”/ “Law”), this matter comes before the Pennsylvania State Charter School Appeal Board (hereinafter “CAB”) on appeal by the Eastern University Academy Charter School (hereinafter “EUACS”) from an April 26, 2018 decision by the School District of Philadelphia’s School Reform Commission (“SRC”) which denied EUACS’s charter renewal request. EUACS is a charter school located at 3300 Henry Avenue, Philadelphia, PA 19129. In 2009, the School District of Philadelphia (the “School District”) granted EUACS a charter to operate a charter school for a term of three (3) years, beginning on July 1, 2009 and ending on June 30, 2012 (the “Charter”). The Charter limited EUACS’s enrollment to grades 7 through 12.

The School District renewed the Charter for a five-year term beginning July 1, 2012 and ending on June 30, 2017. In the Fall of 2016, EUACS submitted an application to the School District for the renewal of its Charter (the “Renewal Application”). The School District’s Charter Schools Office (“CSO”) oversaw the evaluation of the application and began its

evaluation in the Fall of 2016 by collecting data, conducting site visits and developing a Renewal Rubric through which it assigned weights to information submitted by EUACS.

The CSO published a Renewal Report on or about June 1, 2017 in which it recommended that the Charter not be renewed. The SRC thereafter passed Resolution SRC-8 (the "Nonrenewal Notice") on June 15, 2017 after finding substantial grounds for the nonrenewal of the EUACS Charter based upon approximately fifty-five (55) purported deficiencies. The SRC directed that a public hearing be conducted to address the CSO's recommendation not to renew the Charter. The School District appointed a Hearing Officer to conduct public hearings and issue a proposed report.

Hearings were held over the course of 14 days, from October 9, 2017 through December 20, 2017. The hearing record remained open until January 19, 2018 for public comment. The Hearing Officer issued his proposed report on March 14, 2018 in which he recommended that EUACS's Charter not be renewed upon concluding, in part, that EUACS "violated material standards and conditions contained in its written charter, has failed to meet applicable requirements for student performance, and has violated applicable laws from which it has not been exempted." The SRC voted not to renew the Charter by Resolution dated April 26, 2018 ("SRC-3"). EUACS initiated this appeal from the SRC's decision on June 27, 2018.

EUACS challenges the nonrenewal of its Charter on multiple grounds, including the SRC's/School District's failure to nonrenew the Charter prior to its expiration. EUACS also refutes the factual underpinnings of several of the CSO's claims and asserts that many of the grounds for the nonrenewal have no basis in the Public School Code, Charter School Law or regulations. Instead, it contends that the CSO imposed renewal standards which were not required by law. EUACS additionally asserts that the School District failed to meet its burden of

proof on many of its claims, that its student performance standards were improperly compared to special admission schools, that several of its infractions do not warrant nonrenewal, and that the Hearing Officer was biased in his review of its Renewal Application.

FINDINGS OF FACT

The CAB adopts by reference and incorporates herein the Findings of Fact set forth in the Hearing Officer's March 14, 2018 Report adopted by the SRC on April 26, 2018.

CONCLUSIONS OF LAW

1. The CAB has jurisdiction over this matter. 24 P.S. §17-1729-A.
2. The Charter School Law, Act of June 9, 1997, P.L. 225, No. 22, governs the nonrenewal of a charter by a school district in the Commonwealth of Pennsylvania. 24 P.S. §§17-1701-A *et seq.* ("CSL"/ "Law").
3. Eastern University Academy Charter School is a charter school operating pursuant to the CSL within the School District of Philadelphia. 24 P.S. §17-1701-A *et seq.*
4. In determining whether a school district's nonrenewal of a charter is appropriate, the CAB shall give due consideration to the findings of the school district's board of directors and specifically articulate its reasons for agreeing or disagreeing with the board of directors. 24 P.S. §17-1729-A(d); see also, *West Chester Area School District v. Collegium Charter School*, 760 A.2d 452 (Pa. Cmwlth. 2000).
5. The intent of the Pennsylvania General Assembly in enacting the Charter School Law was, *inter alia*, to establish and maintain schools that improve pupil learning, to increase learning opportunities for all pupils, to encourage the use of different and innovative teaching standards and to hold charter schools accountable for meeting measurable academic standards. 24 P.S.

§17-1701-A. See, *New Hope Academy Charter School v. School District of the City of York*, 89 A.3d 731 (Pa. Cmwlth. 2014).

6. During the term of a charter or at the end of the term of a charter, the local board of school directors of a school district may choose not to renew the charter of a charter school 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 17-1720-A.
- (b) Failure to meet the requirements for student performance set forth in 22 Pa.Code Ch. 5 (relating to curriculum) or subsequent regulations promulgated to replace 22 Pa.Code Ch. 5 or failure to meet any performance standard set forth in the written charter signed pursuant to section 1716-A.
- (c) Failure to meet generally accepted standards of fiscal management or audit requirements.
- (d) Violation of provisions of this article.
- (e) Violation of any provision of law from which the charter school has not been exempted, including Federal laws and regulations governing children with disabilities.
- (f) The charter school has been convicted of fraud.

24 P.S. §17-1729-A(a).

7. The local board of school directors 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).

8. The local board of school directors of a school district 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).
9. The local board of school directors 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).
10. The SRC/School District complied with the procedural requirements of the CSL set forth at 24 P.S. §17-1729-A(c) by having provided the notice of nonrenewal to EUACS and by having conducted a nonrenewal hearing at which the School District presented evidence to support its grounds for nonrenewal of the Charter and where EUACS was provided a reasonable opportunity to cross-examine witness and present testimony and public comment was obtained prior to the School District's decision. 24 P.S. §17-1729-A(c).
11. In determining whether the nonrenewal of a school's charter was appropriate, the 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).
12. In addition to the record, the CAB may consider the charter school plan, annual reports, student performance, and employee and community support for the charter school. 24 P.S. §17-1729-A(d).
13. Because the statutory standards for the CAB's review of charter nonrenewal decisions are the same as those for the review of charter denials, CAB shall make a *de novo* review of the School District's/SRC's determination not to renew EUACS's charter. Compare 24 P.S. §17-

1717-A(i)(6) with 24 P.S. §17-1729-A(c); see also, *West Chester Area School District v. Collegium Charter School*, 760 A.2d 452 (Pa. Cmwlth. 2000).

14. 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 the charter. 24 P.S. §17-1720-A.

15. The Charter School Law permits a school district not to renew a school's charter if the charter school has committed a material violation of the charter. 24 P.S. §17-1729-A(a)(1).

16. The Charter School Law allows a school district not to renew a school's charter if the charter school fails 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 if the charter school fails 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).

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

18. The School District has satisfied its burden of proving the following grounds for the nonrenewal of EUACS's 2012 Charter by a preponderance of the evidence:

- a. EUACS failed to meet the material requirements of its Charter. 24 P.S. §17-1729-A(a)(1);
- b. EUACS failed to meet the applicable requirements for student performance. 24 P.S. §17-1729-A(a)(2);
- c. EUACS violated several provisions of law from which it was not exempted. 24 P.S. §17-1729-A(a)(5).

19. EUACS has failed to meet the requirements set forth in its Charter regarding its affiliation with Eastern University and its stated mission as an early college high school and college-integrated learning community where all students will take and pass at least one college course as a condition for graduation. 24 P.S. §17-1729-A(a)(1).

20. A chartering school district does not lose the ability not to renew a charter pursuant to 24 P.S. §17-1729-A(a) if the proceedings under 24 P.S. §17-1729-A(c) are not completed prior to the end of the charter term.

21. The charter of a charter school does not automatically renew at the conclusion of its term.

22. Following an independent review of the record before the CAB, and after giving due consideration to the findings of the CSO/School District, the CAB finds that the nonrenewal of EUACS's Charter was proper, that it is supported by sufficient evidence of record, and that the School District's decision specifically sets forth its reasons for agreeing or disagreeing with the Hearing Officer's findings incorporated herein. 24 P.S. §17-1729-A.

23. Should any of these conclusions of law be deemed to be findings of fact, the ones so found are incorporated therein.

DISCUSSION

I. Standard of Review and Burden of Proof

The General Assembly has provided the exclusive remedy for the revocation or termination of a charter at 24 P.S. §17-1729-A as follows:

§17-1729-A. Causes for nonrenewal or termination

(a) During the term of the charter or at the end of the term of the charter, the local board of school directors may choose to revoke or not to renew the charter based on any of the following:

(1) One or more material violations of any of the conditions, standards or procedures contained in the written charter signed pursuant to section 1720-A.¹

(2) Failure to meet the requirements for student performance set forth in 22 Pa. Code Ch. 5 (relating to curriculum) or subsequent regulations promulgated to replace 22 Pa. Code Ch. 5 or failure to meet any performance standard set forth in the written charter signed pursuant to section 1716-A.

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

(4) Violation of provisions of this article.

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

(6) The charter school has been convicted of fraud.

24 P.S. §17-1729-A(a). As set forth above, the CSL at 24 P.S. §17-1729-A permits a local board of school directors to revoke or not renew a school charter based upon several enumerated grounds, including violations of a charter, violations of the CSL, or violations of any provision of law for which the charter school has not been exempted. 24 P.S. §§17-1729-A(a)(1)-(5). 24 P.S. §17-1729-A(d) also provides, in part, that the CAB may consider the charter school plan, annual reports, student performance and employee and community support for the charter school in addition to the record and shall give due consideration to the findings of the local board of

directors. *West Chester Area School District v. Collegium Charter School*, 812 A.2d 1172, 1180 (Pa. 2002).

The CSL at 24 P.S. §17-1729-A(d) expressly states that “[t]he [CAB] shall have the exclusive review of a decision not to renew or revoke a charter.” *Id.* To that end, the CAB has the ability to independently determine whether the findings are sufficiently serious or material to justify the nonrenewal of a school's charter. *School District of the City of York v. Lincoln Charter School*, 889 A.2d 1286, 1288 (Pa. Cmwlth. 2006). Here, 24 P.S. §17-1729-A(c) required the School District to produce evidence in support of the grounds for the nonrenewal stated in the SRC's notice and provide EUACS a reasonable opportunity to present testimony and other evidence in favor of renewal. *Thurgood Marshall Academy Charter School*, CAB No. 2007-03. The CAB applies a *de novo* standard of review when entertaining appeals from a school district's nonrenewal of a charter. See, *West Chester Area School District v. Collegium Charter School*, 812 A.2d 1172, 1180 (Pa. 2002).

The burden of proof before the CAB is a preponderance of the evidence. A preponderance of the evidence is generally understood to mean that evidence demonstrating a fact is more likely to be true than not to be true, or if the burden were viewed as a balance scale, evidence in support of a party's case must weigh slightly more than opposing evidence. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854, 856 (Pa. 1950). Such a burden of proof is satisfied by establishing a preponderance of evidence which is substantial and legally credible. *Lansberry v. Pennsylvania Public Utility Commission*, 578 A. 2d 600, 602 (Pa. Cmwlth. 1990).

II. Timeliness of Nonrenewal

EUACS asserts, as a threshold matter, that the School District's nonrenewal of its Charter was untimely for having not been made prior to, or at the end of, its Charter term, June 30, 2017. The Charter School Law at 24 P.S. §17-1729-A(a) provides, in pertinent part, as follows:

§ 17-1729-A. Causes for nonrenewal or termination

- (a) During the term of the charter or at the end of the term of the charter, the local board of school directors may choose to revoke or not to renew the charter based on any of the following...

EUACS argues that this language required the School District not to renew its Charter on or before June 30, 2017.

Generally, the best indication of legislative intent is the plain text of the statute.

McGrory v. Comm. of Pennsylvania, Department of Transportation, 915 A.2d 1155, 1158 (Pa. 2007). A tribunal may resort to statutory construction only “[w]hen the words of the statute are not explicit.” 1 Pa.C.S. §1921(c). “A statute is ambiguous or unclear if its language is subject to two or more reasonable interpretations.” *Bethenergy Mines, Inc. v. Department of Environmental Protection*, 676 A.2d 711, 715 (Pa. Cmwlth.), *app. den.*, 685 A.2d 547 (Pa. 1996). When the words of a statute are clear and free from all ambiguity, the plain language of a statute is not to be disregarded under the pretext of pursuing its spirit. 1 Pa.C.S. §1921(b).

In determining the General Assembly’s statutory intent, the CAB is to presume that the Legislature did not intend for an absurd or unreasonable result, and that it intends to favor the public’s interest as against any private interest. 1 Pa.C.S. §1922(1) and (5). See also, *Whalen v. Commonwealth of Pennsylvania, Department of Transportation*, 32 A.3d 677, 679 (Pa. 2011). Consistent with these principles, administrative bodies having expertise in specific professional areas are to be entrusted to fashion administrative remedies that are fair and appropriate. *Slawek v. State Board of Medical Education and Licensure*, 586 A.2d 362, 365 (Pa. 1991). Statutory remedies and sanctions are not to be disturbed on appeal absent a showing of a manifest and flagrant abuse of discretion or purely arbitrary execution of the agency’s duties or functions. *Id.* For that reason, an administrative agency’s interpretation of a statute that it is charged to enforce is to be provided strong deference unless it frustrates legislative intent. *Velocity Express v.*

Pennsylvania Human Relations Commission, 853 A.2d 1182, 1185 (Pa. Cmwlth. 2004); *Chappell v. Pennsylvania Public Utility Commission*, 425 A.2d 873, 875-876 (Pa. Cmwlth. 1981)].

EUACS cites to *Discovery Charter School v. School District of Philadelphia*, 166 A.3d 304 (Pa. 2017) for the proposition that the CSL cannot be expanded beyond the nonrenewal procedures expressly stated therein. See also, *Commonwealth v. Lukens Steel Co.*, 167 A.2d 142, 143 (Pa. 1961) (Where a remedy or method of procedure is provided by legislation, its provisions must be strictly pursued and exclusively applied). EUACS claims that the statutory language of the CSL must be strictly followed because the School District has not shown that the language of Section 17-1729-A(a) is ambiguous or subject to an alternative interpretation. See, 1 Pa.C.S. §1921(a); *Vetri Navy Yard, LLC v. Department of Community and Economic Development*, 189 A.3d 1137, 1146 (Pa. Cmwlth. 2018); *Whalen v. Comm. of Pennsylvania, Dept. of Transportation*, 32 A.3d 677, 679 (Pa. 2011) (The object of all statutory interpretation is to ascertain and effectuate the intent of the Pennsylvania General Assembly).

EUACS also cites to the Statutory Construction Act's provisions that "[e]very statute shall be construed, if possible, to give effect to all its provisions" and that it is to be presumed "[t]hat the General Assembly intends the entire statute to be effective and certain." 1 Pa.C.S. §§ 1921(a), 1922(2). Because 24 P.S. §17-1720-A expressly directs that an initial charter be no less than 3 years and no more than 5 years, and that subsequent renewal terms be for exactly one or five years, EUACS similarly argues that expanding the permissible window for nonrenewal beyond the expiration of its Charter would render the language "end of the term" meaningless or mere surplusage as it is used within 24 P.S. §17-1729-A(a). See, *Walker v. Eleby*, 842 A.2d 389, 400 (Pa. 2004). EUACS also refutes the School District's contention that a strict interpretation

of 24 P.S. §17-1729-A(a) would be untenable in cases where causes for nonrenewal arise late in a charter's term because it would prevent a school district from completing the nonrenewal process by the end of the charter term.

The School District counters EUACS's assertions on the following grounds: (1) 24 P.S. §17-1729-A does not impose a deadline by which a nonrenewal of a charter must be completed; (2) 24 P.S. §17-1729-A(c) sets forth the due process a charter school must be provided prior to the nonrenewal of a charter; (3) 24 P.S. §17-1729-A(d) does not impose a time limit on the steps needed to be taken prior to the completion of a nonrenewal of a charter; and (4) EUACS's Charter continues by operation of law despite the termination date set forth within the Charter.

We agree with the School District that had the Legislature required nonrenewal proceedings to **conclude** before the end of a charter term, it could have expressly imposed that requirement at 24 P.S. §17-1729-A. However, it did not. Instead, the CSL permitted the School District to "choose to...not to renew" EUACS's Charter. Here, the CSO began its evaluation of EUACS's charter renewal application in the Fall of 2016, before the expiration of the Charter on June 30, 2017. The SRC approved resolution SRC-8 on June 15, 2017 by which it found substantial grounds not to renew the Charter and directed the scheduling of hearings pursuant to the applicable provisions of the CSL. It simply did not finish the nonrenewal process prior to June 30, 2017.

Taken to its logical conclusion, EUACS's argument is tantamount to asserting that a school district can never decide not to renew a charter under the CSL unless the nonrenewal proceedings are completed prior to or on the expiration date of the charter school's charter. Because the CSL does not impose such a hard and fast deadline, and because imposing a June 30, 2017 deadline for the completion of the School District's nonrenewal process would

impermissibly expand the provisions of the CSL beyond those set forth by the plain language of the CSL, we decline to strike the School District's nonrenewal of EUACS's Charter on that ground. See, *Discovery Charter School v. School District of Philadelphia*, 166 A.3d 304, 320 (Pa. 2017) (rejecting judicial conferral of jurisdiction upon a tribunal where the Legislature did not so provide).

We also find that because EUACS's position is tantamount to asserting that a school district can never finalize the renewal of a charter after a school's charter has expired, it is contrary to *Community Academy of Philadelphia Charter School v. Philadelphia School District School Reform Commission*, 65 A.3d 1023 (Pa. Cmwlth. 2013) which holds that an application for renewal remains pending until a later action occurs, including "a final determination of nonrenewal." *Id.* at 1030-1031. 24 P.S. §17-1728-A(a) required the School District to "conduct a comprehensive review prior to granting a five (5) year renewal of the charter." Such a thorough review in this case necessarily included a review of EUACS's 2016-2017 school year. Therefore, requiring the School District to complete the process of evaluating EUACS's renewal application prior to the end of that school year under the facts of this case would be counter to the well-established purpose and procedural mechanisms required by the CSL. See, 1 Pa.C.S.A. §1922 (General Assembly does not intend a result that is impossible of execution or unreasonable). Instead, 24 P.S. §17-1729-A only requires that the procedures set forth for the nonrenewal of a charter substantially occur before a school board takes final action not to renew the charter.

III. Laches

The School District argues that EUACS's appeal should be barred under the doctrine of laches for being untimely filed 64 days after the SRC's decision not to renew the Charter. The

Pennsylvania Supreme Court has established a two-part test for determining whether the defense of laches has been preserved: (1) Whether the complaining party is guilty of want of due diligence in failing to institute the action; and (2) Whether the other party has been prejudiced as a result of the delay. *Lajevic v. Department of State, Bureau of Professional and Occupational Affairs*, 645 A.2d 348, 354 (Pa. Cmwlth. 1994) (citing *Weinberg v. Commonwealth, State Board of Examiners of Public Accountants*, 501 A.2d 239, 242-243 (Pa. 1985)). Mere passage of time does not give rise to an automatic finding of laches. *Pennsylvania State Board of Medical Education and Licensure v. Schireson*, 61 A.2d 343, 345 (Pa. 1948). To sustain its claim of laches in this case, the School District must not only prove an unjustified delay by EUACS in appealing from its decision, but also that it was prejudiced as a result of that delay. "Prejudice may be found where there has been some change in the condition or relations of the parties which occurs during the period the complainant failed to act." *Stilp v. Hafer*, 718 A.2d 290, 294 (Pa. 1998). The applicability of the doctrine of laches is a factual determination to be made on a case-by-case basis. *Fulton v. Fulton*, 106 A.3d 127, 131 (Pa.Super. 2014).

In *Weinberg, supra*, the Pennsylvania Supreme Court cited some examples of prejudice justifying the application of laches such as records being lost or destroyed, witnesses becoming unavailable or experiencing faded recollections, or a respondent having detrimentally relied on the delay. *Weinberg*, 501 A.2d at 242. In *Kindle v. Commonwealth, State Board of Nurse Examiners*, 515 A.2d 1342, 1345 (Pa. 1986), the Pennsylvania Supreme Court held that a delay of four years between a nurse's misconduct and an administrative proceeding to suspend her license for that misconduct was an important consideration, but was not dispositive of whether the nurse had been prejudiced by the delay or whether the State Board of Nursing had failed to exercise due diligence in instituting charges.

EUACS argues that its appeal should not be dismissed for being untimely despite the appeal having been filed approximately 64 days after the School District issued its decision to not renew the Charter. EUACS asserts that because the CAB has not promulgated any regulations denoting the time within which a charter school must appeal from the denial of its charter, the dismissal of the present appeal on that ground would be improper. See, *Graystone Academy Charter School v. Coatesville Area School District*, 99 A.3d 125 (Pa. Cmwlth. 2014) (denial of motion to quash appeal where charter school filed appeal 63 days after school district's nonrenewal of charter). EUACS also argues that by comparison, the School Reform Commission authorized the nonrenewal proceedings to begin near the end of its Charter term, and the School District initiated the nonrenewal proceedings on November 9, 2017, 147 days after the SRC voted to initiate the proceedings.

EUACS further notes that the Hearing Officer who presided over the hearing took 84 days from the close of the hearing until he published his report. The SRC took an additional 43 days to approve the Hearing Officer's report and vote to not renew the Charter. Based on these delays, EUACS argues that the School District cannot legitimately contend that it has been prejudiced by its delay in filing the present appeal.

The School District argues that the delay of 64 days was unreasonable because EUACS was aware of the SRC's renewal action. It argues that it was prejudiced by the delay because EUACS will be able to continue its "errant operations and performance" into the 2018-2019 school year by virtue of its ability to continue to operate until final disposition by the CAB pursuant to 24 P.S. §17-1729-A(f). The School District also asserts that delaying the appeal prevents the CAB from being able to uphold a "thorough and efficient system of public education."

Rather than establishing that it has been prejudiced by some change in its relationship with EUACS which occurred during the period EUACS purportedly failed to act, the prejudice purportedly experienced by the School District is primarily premised upon the continuation of its Charter with EUACS. Consistent with *Graystone Academy Charter School v. Coatesville Area School District*, 99 A.3d 125 (Pa. Cmwlth. 2014), we reaffirm our recognition that the CSL does not establish a definitive time within which the appeal of a decision not to renew a charter must be filed with the CAB so as to quash EUACS's appeal on that ground. Nor do we find that the School District has demonstrated sufficient prejudice to warrant the dismissal of EUACS's appeal. For these reasons, the CAB declines to dismiss EUACS's appeal under the doctrine of laches. *Khepera Charter School v. The School District of Philadelphia*, CAB Docket No. 2018-01, pp. 36-37.

IV. Student Performance Standards

EUACS raises numerous challenges to the nonrenewal of its Charter based upon the School District's findings that it failed to meet student performance standards. 24 P.S. §17-1729-A(a)(2) provides "(a) ... the local board of school directors may choose to revoke or not to renew the charter based on any of the following:...(2) Failure to meet the requirements for student performance set forth in 22 Pa. Code Ch. 5 (relating to curriculum) or subsequent regulations promulgated to replace 22 Pa.Code Ch. 5 or failure to meet any performance standard set forth in the written charter signed pursuant to [24 P.S. §17-1716-A]." "Academic standard" is defined as "what a student should know and be able to do at a specified grade level." 22 Pa.Code §4.3. 22 Pa.Code §4.51(a)(6) provides in pertinent part, as follows:

§4.51. State assessment system.

(a) The State assessment system shall be designed to serve the following purposes:

(6) Assess student proficiency in the Academic Standards for English Language Arts (Appendix A-2), Mathematics (Appendix A-2), Science and Technology and Environment and Ecology (Appendix B) and Civics and Government (Appendix C) for the purpose of determining, in part, a student's eligibility for high school graduation.

22 Pa.Code §4.51(a)(6).

By promulgating the CSL, the Pennsylvania General Assembly intended to hold charter schools "accountable for meeting measurable academic standards," in order to ensure that charter schools were accomplishing the goals of the CSL. *New Hope Academy Charter School v. School District of York*, 89 A.3d 731, 736, 737 (Pa. Cmwlth. 2014); 24 P.S. §17-1702-A(a)(2). Where a provision of the Charter School Law is unclear, the CAB must interpret it to effectuate the purposes of the Charter School Law and the Public School Code. *Northside Urban Pathways Charter School v. State Charter School Appeal Board*, 56 A.3d 80, 83–87 (Pa. Cmwlth. 2012) (interpreting Charter School Law to provide CAB exclusive jurisdiction over appeals of school district decisions not to renew a charter in order to fulfill purposes of Charter School Law and Public School Code).

Because the fundamental purpose of the Public School Code is to provide "a thorough and efficient system of public education" in accordance with Article III, Section 14, of the Pennsylvania Constitution, all statutes that are part of the Public School Code must be interpreted to permit school districts to take actions necessary to provide students a good education. See, *Burger v. Board of School Directors of McGuffey School District*, 839 A.2d 1055, 1061–62 (Pa. 2003); *School District of Wilkinsburg v. Wilkinsburg Education Association*, 667 A.2d 5, 8–10 (Pa. 1995); *Northside Urban Pathways Charter School*, 56 A.3d at 83–84. "The fundamental public policy, expressed in the Constitution and underlying school laws, is to obtain a better education for the children of the Commonwealth." *Appeal of Walker*, 2 A.2d 770,

772 (Pa. 1938). The Charter School Law is part of the Public School Code and must be interpreted to carry out the purpose of providing a quality education. See, Northside Urban Pathways Charter School, 56 A.3d at 83.

EUACS asserts that neither 24 P.S. §17-1729-A(a) nor the student performance standards at 22 Pa.Code §4.12(c) set forth specific student performance standards which must be achieved in order to maintain its charter. Instead, it contends that the standards set forth merely identify “the targets for instruction and student learning essential for success in all academic areas....” EUACS further asserts that 22 Pa.Code §4.51(a)(4) provides only that standardized test performance levels shall be characterized as “advanced,” “proficient,” “basic” or “below basic,” and does not proscribe a “passing” score. Accordingly, it argues that the stated grounds for nonrenewal set forth in the Hearing Officer’s Report and/or Resolution SRC-3 based upon EUACS’s failure to achieve certain metrics on standardized tests is unfounded as a matter of law.

As correctly recognized by the Hearing Officer, the Pennsylvania System of School Assessments (“PSSA”), the PSSA-Modified (“PSSA-M”), the Pennsylvania Alternative System of Assessments (“PASA”) and the Keystone Examinations have been used for evaluating student performance during the term of EUACS’s 2012 Charter. Charter schools have also been subject to “No Child Left Behind (“NCLB”) and the Every Student Succeeds Act (“ESSA”) at the Federal level, and to Adequate Yearly Progress (“AYP”) and School Performance Profiles (“SPP”) at the State level until the SPR was used for charter schools at the beginning of the 2013-2014 school year.

The SPP, in particular, provides each school building with an academic score and a tier ranking from over 100 at its highest to a score below 60 at its lowest. The SPP score calculation is based upon multiple metrics, including student achievement or proficiency as measured by

state assessment data, the amount of growth shown in successive years as measured by the Pennsylvania Value Added Assessment System (“PVAAS”)¹, attendance rates, graduation rates, SAT/ACT results and other academic indicators. A score of less than 60 is in the lowest performing category.

In *New Hope Academy Charter School v. School District of York*, 89 A.3d 731 (Pa. Cmwlth. 2014) the Pennsylvania Commonwealth Court recognized:

[B]ecause the fundamental purpose of the Public School Code is to provide ‘a thorough and efficient system of public education’ in accordance with Article III, Section 14 of the Pennsylvania Constitution, all statutes that are part of the Public School Code must be interpreted to permit school districts to take actions necessary to provide students a good education.

New Hope, 89 A.3d at 739. The *New Hope Academy* court found that the regulations referenced at 24 P.S. §1729–A(a)(2) are those set forth in 22 Pa.Code Chapter 4 which set forth the PSSA as the measure of student and school performance and set standards of performance to be measured by the PSSA, including proficiency. *New Hope*, 89 A.3d at 737; 22 Pa.Code §§4.2, 4.51(a), (b), (e). See also, *Ronald H. Brown Charter School v. Harrisburg School District*, 928 A.2d 1145, 1152-1153 (Pa. Cmwlth. 2007). Accordingly, the court in *New Hope Academy* found that poor student academic performance can be used as a basis for denying a charter renewal and, in particular, determined that a consistently low percentage of students scoring proficient or better on the PSSA constituted a failure to satisfy Chapter 4 student performance requirements and was a valid ground for nonrenewal of a school's charter under Section 1729–A(a)(2) of the CSL where the charter school's proficiency rates were lower than those of the school district's schools as a whole, and where no clear pattern of significant improvement in its PSSA results were shown. *New Hope Academy*, 89 A.3d at 737.

¹ PVAAS data measures academic growth of students taking the PSSA or Keystone Examination relative to changes in their achievement level during a reported year.

Notably, the *New Hope Academy* court expressly rejected arguments similar to those being made by EUACS, namely that Chapter 4 of Title 22 of the Pennsylvania Code does not set forth requirements for student performance and that poor academic performance does not equate to a failure to meet the requirements for student performance under the CSL. The CAB disagrees with EUACS's interpretation of *New Hope Academy* and recognizes that Pennsylvania's Legislature requires charter schools to participate in the aforementioned accountability systems pursuant to 24 P.S. §17-1715-A(8). We equally recognize that the Charter School Law is a part of the Public School Code and must be interpreted to carry out the purpose of providing a quality education. *Northside Urban Pathways Charter School*, 56 A.3d at 83. See, also, *Delaware Valley*, CAB No. 2016-06 (recognizing enforcement of student performance standards at 22 Pa.Code §§4.2 and 4.51 under the CSL). Accordingly, a school district may deny the renewal of a charter for failing to meet student academic performance standards under 24 P.S. §17-1729-A(a)(2). See, e.g., *Delaware Valley*, CAB No. 2016-06; *Truebright Science Academy Charter School v. Philadelphia School District*, 115 A.3d 919 (Pa. Cmwlth. 2015); *New Hope Academy, supra*; *Career Connections Charter High School v. School District of Pittsburgh*, 91 A.3d 736 (Pa. Cmwlth. 2014); *Graystone Academy Charter School v. Coatesville Area School District*, 99 A.3d 125 (Pa. Cmwlth. 2014).

The record in this case shows that EUACS's SPP scores fell below the charter school average in every year of the 2012 Charter term and below the School District's average in every year except 2015-2016. Data similarly shows that the percentages of EUACS's students who scored proficient or advanced on the PSSA in grades 7-8 Math were significantly below the overall percentages in both School District schools and charter schools, with the exception of the School District's percentages in 2012-2013. EUACS also failed to meet its goal of increasing its

Middle School Math PSSA proficiency from 0% to 18% for the 2016-2017 school year as stated in its most recent Application.

The record also shows that during the 2012 Charter term, the percentages of EUACS's students who scored proficient or advanced on the PSSA Reading/ELA in grades 7-8 were also substantially below the overall percentages in both School District and charter schools. EUACS similarly failed to meet its goal of increasing its Middle School ELA PSSA proficiency from 23% to 34% for the 2016-2017 school year as stated in its most recent Application. The percentages of EUACS's students who scored proficient or advanced on the PSSA in Grade 8 Science were similarly below the overall percentages in both School District and charter schools. Once again, EUACS failed to meet its goal of increasing its Middle School Science PSSA proficiency from 13% to 20% for the 2016-2017 school year as stated in its most recent Application.

The performance of EUACS's students on Keystone Examinations similarly demonstrated the underperformance of its students. During the 2012 Charter term, the percentages of EUACS's 11th grade students who scored proficient or advanced on the Keystone Examination in Algebra I were substantially below the overall percentages in both School District and charter schools, with the exception of the 2012-2013 school year. The percentages of EUACS's 11th grade students who scored proficient or advanced on the Keystone Examination in Literature were substantially below the overall percentages in School District and charter schools, with the exception of the 2015-2016 school year in both sectors and School District schools in the 2016-2017 school year. The percentages of EUACS's students who scored proficient or advanced on the Keystone Examination in Biology were substantially below

the overall percentages in both School District and charter schools, with the exception of the 2015-2016 school year.

Moreover, the record shows that EUACS's performance in Keystone-tested subject areas declined in 2016-2017, and the percentages of EUACS students scoring below basic on Keystone Examinations has been inconsistent during the Charter term in Algebra I and Biology.

Admittedly, the number of students scoring below basic in Literature had increased twice in the most recent three years. However, the data of record fails to show that EUACS students have achieved consistent or sustained success in closing the achievement gap in either the totality of its students or in historically underperforming student populations as shown by the SPP. To the extent one of the components of the SPP score is the percentage of students meeting the college and career readiness benchmarks reflected by SAT and ACT scores, the average SAT score of EUACS's 12th graders fell below the average School District and charter school scores for the 2014-2015 school year.

The record also demonstrates the absence of significant student growth in grades 7 and 8 after students arrived at EUACS. AGI data shows that EUACS did not meet its Average Growth Index ("AGI") goals in the following areas: (1) Math PSSA scores for Middle School grades in the 2013 through 2016 school years; (2) Reading/ELA PSSA scores for Middle School grades in the 2012 through 2015 school years; (3) Keystone Algebra I scores for 2012 through 2015 school years; and (4) Keystone Literature scores for 2013 through 2015 school years. In Reading/ELA EUACS satisfied the growth standard in only one year, and the record shows only moderate evidence of meeting the growth standard in another year but not in all three prior years.

Faced with the foregoing data, EUACS argues that even if the Public School Code, 24 P.S. §17-1729-A(a) and/or 22 Pa.Code §4.12(c) establish objective minimum student

performance standards, the record fails to support the conclusion that its violations of those standards justify nonrenewal. EUACS cites to *Gillingham Charter School*, CAB Docket No. 2016-11, *I-LEAD Charter School*, CAB Docket No. 2016-05 and *New Hope Academy* for the proposition that its test results must be compared to the scores of schools with similar student populations or risk returning its students to schools which do not achieve academic success any better than EUACS. However, in *New Hope Academy*, the court reasoned:

Comparison of a charter school's academic performance to its local school district in applying Section 1729-A(a)(2) is appropriate for two reasons. First, a charter school's students are drawn from the same population as the school district's schools and, where, as here, the charter school is a middle school or high school, its students come from the same group of elementary schools as the school district schools and therefore are likely to have a similar educational background to the students in school district schools. The school district's academic results therefore provide some indication of whether the charter school's academic results are connected to its educational performance or are instead due to preexisting educational disadvantages and deficiencies in the school district. Second, and more fundamentally, consideration of the performance of the school district's schools is relevant to determine whether nonrenewal for failure to meet academic performance standards would serve the educational purposes of the Charter School Law and the Public School Code. Closure of a charter school will send many of its students to the school district schools. If school district schools are achieving better academic results, even if those results are also below state standards, nonrenewal of the charter will place students in schools that better satisfy state educational requirements. In contrast, 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.

See, *New Hope Academy*, 89 A.3d at 740.

The data of record shows that EUACS's proficiency rates are below the School District's average rates throughout the Charter term in all tested grades and subject areas with the sole exception of Algebra I in school years 2012-2013 and 2015 -2016, even when removing special admissions schools from the data. For that reason, the School District contends that the removal of special admissions schools from the data would eradicate the standards articulated in *New*

Hope Academy and the premise upon which it was decided; namely, that the transfer of students from a charter school performing below its school district's academic performance will nevertheless result in students attending schools that better satisfy state educational requirements even if the school district's schools also score below state standards.

EUACS argues that the School District improperly measured EUACS's student performance by comparing its test scores to the academic scores of special admission schools whose academic scores were significantly inflated, instead of comparing its test scores to similarly situated schools within the Philadelphia School District. EUACS contends that its tests scores were equal to or exceeded the School District's test scores when the scores of the special admission schools are removed from the test data. For that reason, it asserts that the School District's decision not to renew its Charter was based upon an improper comparison of academic success.

EUACS also asserts that the School District over-emphasized PSSA testing relative to Keystone testing because its PSSA test scores resulted from education initiatives undertaken by schools the students attended prior to their enrollment at EUACS at grades 7 through 12. According to its expert, Dr. Schuh, EUACS had only a small degree of influence over student reading performance on the PSSA for students entering the 7th grade because the test was only administered in the 7th and 8th grades. Dr. Schuh also opined that EUACS students' academic history prior to their matriculation affected their PSSA math scores even more significantly because math scores are cumulative and depend upon an understanding of rudimentary concepts developed prior to the 7th grade. EUACS argues that because *New Hope Academy* requires the School District to prove that EUACS's students would be better off if the Charter were not

renewed, and because its test data proves otherwise when compared to similar schools within the School District, the School District failed in its burden to justify the nonrenewal of its Charter.

Here however, we find that the School District properly adopted the reasoning used by the SRC to support its inclusion of data from special admission schools in its comparative analysis of student performance. Because students have the option of attending brick and mortar schools, cyber schools, private schools, special admission schools or being home-schooled, and because each venue has different and nonuniform enrollment criteria, we cannot conclude that admission to “special admission schools” guarantees that students will score “proficient” or “advanced” on State standardized assessments in those schools or that students at special admission schools always perform better than neighborhood schools, city-wide schools or charter schools.

The record also shows that EUACS failed to produce any evidence, including pre-admission test scores, showing that its matriculating students were as academically deficient as EUACS suggests so as to explain their poor test scores at EUACS. We find that the record also fails to support EUACS’s contention that special admission schools routinely siphon away the best students from the available student population and thereby relegate charter schools to admitting underperforming students with low aptitudes and/or poor educational foundations. Although EUACS Exhibit 74 contains enrollment criteria, it does not establish the proficiency of the students who actually enrolled in the special admission schools nor does it show that the other schools only admitted the best students for comparison.

Statistics of record also support a finding that Philadelphia charter schools generally perform well academically and, in some cases, better than special admission schools. Pennsylvania Department of Education statistics show that the top 25% of all charter schools in

Pennsylvania include several schools from Philadelphia. The failure by EUACS's expert Dr. Schuh to identify the schools he removed from his calculations when he developed his revised proficiency rates without using data from special admission schools also serves to undermine the reliability of EUACS's assertions that its tests scores meet or exceeded the School District's test scores when the scores of the special admission schools are removed from the test data.

We also find that it was proper for the School District to compare EUACS's proficiency percentages on the PSSA and Keystone Examinations to other Philadelphia charter sector rates for 7th, 8th and 11th grades because such comparisons have been deemed appropriate under Chapter 4 and the standards articulated in *New Hope Academy*. Because EUACS students could have attended other charter schools operating in Philadelphia at the same grade levels at the time of EUACS's Renewal Application, we find that the other charter schools created an appropriate comparison group to EUACS. Moreover, as set forth above, the CAB has routinely evaluated cases of nonrenewal using school district comparison groups which include a variety of schools within a school district at like grade levels, including special admission schools and charter schools. *See, Delaware Valley*, CAB No. 2016-06 at 29-31; *Khepera*, CAB No. 2018-01 at 42; *Imani*, CAB No. 2014-08 at 36-39. For the foregoing reasons, the School District acted within its discretion when it declined to renew EUACS's Charter based upon its failure to achieve adequate student performance.

V. Charter Violations

The School District's decision not to renew EUACS's Charter based upon several material violations of its Charter is also supported by the record. 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 are incorporated into the charter. 24 P.S. §§17-1720-A; 17-1729-A(a)(1). See also *Truebright Science Academy Charter School*, CAB No. 2013-11, p. 15. The School District/SRC granted EUACS a charter to operate a charter school for a three-year term beginning July 1, 2009 through June 30, 2012. EUACS enrolled students in grades 7-11 at the end of its initial Charter term. The School District/SRC thereafter approved a renewal of the Charter for an additional 5-year term beginning July 1, 2012 through June 30, 2017, subject to the following conditions: (1) EUACS was required to develop and submit a five-year performance plan with specific academic and nonacademic goals; (2) EUACS was required to develop and submit an admissions policy to be annually monitored by the School District which complied with the CSL; (3) EUACS was required to ensure that it remained compliant with certification requirements, highly qualified teacher (“HQT”) requirements, clearance and background check requirements, and Ethics Act requirements/Statements of Financial Interest; and (4) EUACS was required to improve student performance as measured by the School District’s Performance Index “or an equivalent ranking on any subsequent accountability standards developed by the School District.”²

Moreover, the 2012 Charter incorporated into EUACS’s original Application and in its Renewal Application submitted for the 2011-2012 school year required EUACS to operate the Charter School in conformity with the mission statement set forth in the Application, including the provision of a college-integrated learning community and an “Early College program where students prepare for and earn college credit prior to graduation.” The Application also required that “[i]n order to qualify for graduation from EUACS, students must successfully “[p]repare for and take the SAT,” “[c]omplete a college portfolio,” [v]isit and interview with at least three

² EUACS’s failure to improve student performance has been previously addressed above and, therefore, need not be addressed once again in the context of its failure to comply with the terms of its Charter.

colleges,” and “[o]btain at least 3 college credits” by taking accredited courses offered by its faculty at the Charter School, taking college classes at Eastern University’s campus, or taking college coursed taught by Eastern University’s faculty and graduate students at the Charter School.

In *Thurgood Marshall Academy Charter School*, CAB No. 2001-05, the CAB has previously found that information in a charter school application is intrinsic to the charter because of the thorough and detailed nature of the application, its role in defining how the charter school will operate, and because the information contained within an application eventually becomes part of the charter. *Id.* at 12. Accordingly, the CAB rejects EUACS’s assertion that because the mission statement in its Renewal Application was not part of its Charter, its alleged violation of the mission statement cannot form the basis for denying renewal under 24 P.S. §17-1729-A. For the foregoing reasons, the CAB similarly rejects EUACS’s contention that the requirement for a “college-integrated learning community” was not sufficiently specific for the purposes of 24 P.S. §17-1729-A upon consideration of the detailed nature of the requirements and/or conditions set forth in its original Application and in its Renewal Application. EUACS’s argument that its original Charter only represented that students “would have the opportunity to earn college credit” through instruction at its campus or at Eastern University’s campus is also found to have little import based upon the totality of the record.

The record further shows that EUACS lost its affiliation with Eastern University as a principal partner of the Charter School. EUACS entered into a settlement agreement with Eastern University under which it was to change the name of the Charter School and remove any

references to Eastern University from its public displays/advertisements. Moreover, no student has taken a class at Eastern University since the Fall 2015.

The record also shows that EUACS's attempts to affiliate itself with three other institutions of higher education in a manner similar to its relationship with Eastern University have been unsuccessful. Specifically, there is no credible evidence that any EUACS student has taken or completed a course at two of the institutions, and the courses taken by EUACS students at the third institution beginning Spring 2016 constituted college readiness and foundational courses for which no college credit was available. Statistics of record show that out of 54 EUACS graduates in 2013, only 9 satisfied the requirement of passing at least one college course. Of 48 graduates in 2014, only 10 satisfied the requirement. Of 47 graduates in 2015, only 6 met the requirement, and only 10 met the requirement out of the 52 graduates in 2016. The record further shows that only 3 EUACS students graduated with at least 3 college credits in 2017, and that EUACS unilaterally eliminated that graduation requirement incorporated into its Charter without having sought a Charter amendment to do so.

VI. Violations of Law

In addition to properly relying upon the academic deficiencies and EUACS's breaches of its Charter as set forth above, the School District properly declined to renew EUACS's Charter based upon EUACS's failure to comply with numerous State and Federal laws and regulations.

1. Insufficient Staff Certifications

The CSL required EUACS to satisfy Pennsylvania's certification requirement that "[a]t least seventy-five per centum of the professional staff members of a charter school shall hold appropriate State certification" during the pendency of its 2012 Charter. 24 P.S. §17-1724-A(a). In turn, 22 Pa.Code §49.13 imposes the following requirements, in pertinent part:

§49.13. Policies.

(b) The Department will have the following responsibilities with respect to certification and permitting of professional personnel in the schools of this Commonwealth:

(2) Designation of professional titles for personnel.

(3) Prescription of procedures for issuance of certificates and permits.

(5) Registration of certified and permitted persons.

(6) Maintenance of records of all certificates and permits.

(10) The issuance of administrative agency interpretative policies and directives relating to professional certification and staffing in the schools of this Commonwealth as may be necessary to carry out the intent of this chapter.

22 Pa.Code §49.13. "In order to be counted toward the 75 percent, an individual must hold an active and valid professional certification and must be properly certified in all areas or subjects they are teaching or hold an emergency permit for the proper area/subject being taught."

Department of Education Basic Education Circular, *Charter Schools*, p. 18 (May 22, 2019). See, also Pennsylvania Department of Education Certification and Staffing Policy Guidelines ("CSPG") 24. Moreover, 22 Pa.Code §711.5 provides that "Persons who provide special education or related services to children with disabilities in charter schools and cyber charter schools shall have appropriate certification, notwithstanding section 1724-A of the Act (24 P. S. § 17-1724-A)." 22 Pa.Code §711.5(a).

"Principals, special education teachers and supervisors...employed by charter schools must hold appropriate state certification and cannot be counted toward the 25 percent of

professional staff that do not have to hold appropriate certification.” See, CSPG 24. CSPG 24

further provides the following:

Pursuant to 24 P.S. §11-1109, charter school service as **principal, vice principal, or assistant principal must** be counted against the validity (service time) of the certificate.

If a charter/cyber school does not employ any individual in a position titled principal, but employs an individual in a locally titled position (i.e. school director) who performs all of the duties of a principal, the charter/cyber school must utilize an Administrative certified educator and identify the individual as **Principal** in PIMS/PERMS. Regardless of the local title given the position, if an individual serves in the position of **Principal** in a charter school, he/she must comply with all related Act 45 and PIL requirements. Local Education Agencies (LEAs) may not create and utilize local titles to avoid the mandates of Act 45 and specifically 24 P.S. §11-1109.

(emphasis in original). See, CSPG 24.³ Based on this language, EUACS’s assertion that applicable certification requirements were ambiguous and/or that there is no statutory or regulatory definition of “professional staff members” or guidance from the Pennsylvania Department of Education regarding the meaning of the foregoing terms lack merit.

As to the whether EUACS maintained a sufficient number of certified educational staff, its 2014-2015 Annual Report indicated that only 71.4% of its teachers were appropriately certified. Its most recent Application similarly reflected that only 70% of its professional staff were certified in 2012-2013, 75% were certified in 2013-2014, 74% were certified in 2014-2015, 75% were certified in 2015-2016 and 75% were certified in 2016-2017. EAUCS’s 2015-2016 Annual Report identify its Principal, Omar Barlow (“Mr. Barlow”), and Special Education Coordinator, Nia Ford (“Ms. Ford”), as being “appropriately certified.” Mr. Barlow is similarly identified in EAUCS’s 2016-2017 Annual Report.

³ CSPG 24 effective November 1, 2015 were materially similar to those effective May 22, 2019 in terms of certification requirements.

Notwithstanding those assertions, the record shows that Ms. Ford did not hold a special education teacher certification, special education supervisory certification, or principal's certification while serving as EAUCS's special education coordinator since the beginning of the 2014-2015 school year and while providing professional development for all staff in special education areas since the 2014-2015 school year. The CAB has previously found that PDE regulations require that all special education teachers hold appropriate State certification and that they cannot be counted as part of the 25% of personnel who are not required to hold appropriate State certification. *Ronald Brown Charter School*, CAB No. 2005-08, pp. 26-27; see also, 22 Pa.Code §711.5.

The record similarly shows that Mr. Barlow has continuously served as EAUCS's CEO and Principal since 2009 but has never obtained an Administrative II Principal certificate since the 2014-2015 school year. Further, no other person working at EAUCS has held a principal certificate since the Assistant Principal's departure in 2017. For these reasons, EAUCS's contention that it did not violate the 75% certification requirement because Mr. Barlow had not "devote[d] one-half or more of his time to supervision and administration" is unavailing. See, EUACS Brief, p. 124. Removing Mr. Barlow and Ms. Ford from the reported percentages of appropriately certified staff from the 2015 school year through the 2017 school year therefore reduces the stated percentages for those years to below 75%.

2. Due Process for Suspensions and Expulsions

The School District argues, and the record supports the finding, that EUACS violated 22 Pa.Code §§12.6 and 12.8 by having excluded students from school for more than 15 days without agreements by the students' families prior to expulsion hearings and/or decisions

regarding the exclusions being made by the Charter School. 22 Pa.Code §12.6 provides, in pertinent part:

§ 12.6. Exclusions from school.

(b) Exclusion from school may take the form of suspension or expulsion.

(2) Expulsion is exclusion from school by the governing board for a period exceeding 10 school days and may be permanent expulsion from the school rolls. Expulsions require a prior formal hearing under §12.8.

(c) During the period prior to the hearing and decision of the governing board in an expulsion case, the student shall be placed in his normal class except as set forth in subsection (d).

(d) If it is determined after an informal hearing that a student's presence in his normal class would constitute a threat to the health, safety or welfare of others and it is not possible to hold a formal hearing within the period of a suspension, the student may be excluded from school for more than 10 school days. A student may not be excluded from school for longer than 15 school days without a formal hearing unless mutually agreed upon by both parties. Any student so excluded shall be provided with alternative education, which may include home study.

22 Pa.Code §12.6. Further, 22 Pa.Code §12.8 requires that formal hearings be convened in all expulsion actions and that a hearing be held within 15 school days of the notification of charges being sent to the students' parents or guardians.

Documentary evidence in the form of correspondence from the Charter School's Principal dated November 4, 2016 and testimony from former Manager for Accountability with the Charter Schools Office establish by a preponderance of the evidence that several students had been excluded from EUACS for more than 15 school days in November 2016 prior to formal hearings on their exclusions being held. The record is also devoid of any credible evidence that the students' families consented to the exclusions so as to bring them into compliance with 22 Pa.Code §12.6.

3. Failure to File Timely Annual Reports

The CSL at 24 P.S. §17-1728-A(a) required EUACS to provide the School District with “ongoing access to the records and facilities of the charter school to ensure that the charter school is in compliance with its charter and [the CSL] and that requirements for testing, civil rights and student health and safety are being met.” 24 P.S. §17-1728-A(b) similarly requires that “[E]ach 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.”

The record shows that EUACS’s 2013-14 Annual Report did not contain any content, uploaded files, signatures or affirmations. In his Report, the Hearing Officer identified several aspects of a 2013-2014 Annual Report offered into evidence at the hearing which he concluded had been “altered to convey the false impression that Eastern submitted a 2013-14 Annual Report” based upon several aspects of the exhibit. The Hearing Officer observed that the 2013-2014 Annual Report had the identical date and content of the following year’s Annual Report, including meeting dates for the 2014-15 school year, and was not in the Comprehensive Planning System used to review such reports as recently as one week prior to the date of the hearing. Based upon these findings, the CAB has no credible basis to supplant the findings of credibility made by the Hearing Officer who was in a position to observe witness demeanor and evaluate the reliability of documentary evidence presented at the hearing. Further, the record shows that EUACS submitted its 2014-2015 Annual report 12 days late, on August 13, 2015, in contravention of 24 P.S. §17-1728-A(b).

4. Failure to Obtain Criminal Background Checks and Child Abuse Clearances

The CSL and applicable regulations require that criminal history records be obtained, that FBI background checks be performed and that child abuse clearances be obtained for all

employees who have direct contact with children. 24 P.S. §17-1724-A(i), (j); 22 Pa.Code §8.2. Moreover, charter schools are required to maintain copies of those documents in an applicant's file. *Id.* Pursuant to a review of 20 personnel files during the School District's Fall 2016 onsite review, it was discovered that 2 employee files were missing Pennsylvania Child Abuse History Clearances less than five years old at the time of hire, 2 employee files included clearances that were more than five years old at the time of review, 5 employees were missing Pennsylvania Criminal Background Checks less than five years old at the time of hire, 15 employees were missing timely FBI Background Checks, and 14 employee files for employees hired on or after January 1, 2015 were missing Act 168 training certifications.

EUACS asserts, as a threshold matter, that such findings, even if accurate, are not grounds for nonrenewal because there are no legal requirements regarding Act 168/24 P.S. §1-111.1 training certifications. EUACS also contends that there are no requirements for State or Federal criminal background checks or child abuse clearances for employees who do not have direct contact with children. See, 23 Pa.C.S.A. §§6303, 6344; 24 P.S. §§1-111(b), (c.1); 22 Pa.Code §8.1. EUACS further argues that because the record fails to establish that the employees cited by the School District had direct contact with children and/or were Pennsylvania residents so as to trigger the need for criminal background checks or child abuse clearances, the School District failed to sustain its burden of proof.

Although EUACS contends that FBI and state background checks were conducted on many of the employees, the record shows that EUACS did not establish that the missing documentation was actually in the personnel files at the time of the site visit. The record also shows through the testimony of EUACS's Chief Operating Officer that EUACS had only recently begun to include ACT 168 information in employee files during the 2016-2017 school

year, and only after EUACS was made aware of that requirement during the renewal site visit. Similarly, Teacher Information Management System certification data establishes that all of the employees missing clearances were teachers.

When addressing EUACS's argument that 22 Pa.Code §8.1 does not require Federal criminal history records, 24 P.S. §1-111(c.1) has required Federal criminal history records for all applicants for public school employment since April 1, 2007. Similarly, a registration for Federal criminal history records is insufficient to comply with 24 P.S. §1-111(c.1) pursuant to Department guidance. See, 24 P.S. §17-1724-A(i), (j); 22 Pa.Code §8.2. As to EUACS's argument that it should be excused for failing to have obtained background checks because its omissions were inadvertent, willful violations are not necessary to justify nonrenewal because of the importance of having such clearances as demonstrated by the multiple statutory and regulatory requirements for such clearances.

5. Admission Policies/Student Enrollment

EUACS asserts that the Department of Education's Basic Education Circular ("BEC") is not law but, instead, merely provides guidance regarding student enrollment, social security information and other documents. It further argues that 22 Pa.Code, Chapter 11, does not impose a requirement that charter schools adopt admissions policies or that such policies contain certain provisions.

The BEC requires that the following categories of information be provided as part of the admissions process: (1) Proof of the child's age; (2) Confirmation of required immunizations; (3) Proof of residency; (4) A parent registration statement; and (5) A home language survey. The BEC additionally states that a charter school "may not request or require...a social security number" as a condition for enrollment.

EUACS contends that its acceptance and maintenance of social security cards does not prove it requested or required that social security cards be submitted by parents. Instead, parents may have simply provided social security cards to EUACS as a method of proving students' dates of birth and/or age as part of the admissions process. Accordingly, EUACS argues that the School District failed to satisfy its burden of proof absent evidence EUACS actually required social security cards or other proof of citizenship as a condition for admission.

We agree with the School District's contention that EUACS's Charter required it to comply with guidance provided by State authorities, including the Basic Education Circular on Enrollment of Students ("BEC"). However, we do not find that the record supports a finding that EUACS required the production of social security cards as a condition for admission. Nor do we find that the findings of the Hearing Officer regarding EUACS's failure to strictly follow the BEC regarding the admissions process constituted a sufficient ground to not renew EUACS's Charter.

6. Failure to Submit Statements of Financial Interest/ Ethics Act Violations

Pennsylvania's Public Official and Employee Ethics Act (the "Ethics Act") required members of EUACS's Board of Trustees to file Statements of Financial Interest by May 1 of each year as "public officials." 65 Pa.C.S. §1104(a); 24 P.S. §17-1715-A(11). EUACS's 2012 Charter similarly required members of the Board of Trustees to file Statements of Financial Interest by May 1 for the previous calendar year. Despite these requirements, the record shows that more than 26 Statements of Financial Interest were missing for calendar years 2012, 2013 and 2014 and that only two Statements were timely filed.

When addressing its failure to file timely Statements of Financial Interests, EUACS asserts that the failure by some members of the Board of Trustees cannot be attributed to EUACS

and, therefore, cannot form a legitimate basis for not renewing its Charter. EUACS also cites to the absence of evidence that its failure to file the Statements of Financial Interests resulted in its inability to properly govern the Charter School. By contrast, the School District contends that EUACS's failure to file timely financial statements is a valid ground for nonrenewal when considered in conjunction with EUACS's other violations, as opposed to the nonrenewal being based solely upon the omissions themselves.

In *Khepera Charter School v. The School District of Philadelphia*, CAB No. 2018-01, pp. 48-49, the CAB found that while the failure of a charter school's board member to file a Statement of Financial Interest cannot be imputed to the charter school, such a failure can form the basis for a nonrenewal of a charter if such a filing was required by the school's charter and if the failure was considered in the aggregate of other violations. *Id.* (citing *School District of the City of York v. Lincoln Charter School*, 889 A.2d 1286, 1289 (Pa. Cmwlth. 2006)). See also, *Renaissance Charter School*, CAB No. 2008-07, pp. 13-14. More recently however, in *Reading School District v. I-Lead Charter School*, 206 A.3d 27, 46-47 (Pa. Cmwlth. 2019), the Pennsylvania Commonwealth Court found that the CAB did not err when it declined to impute to the charter school the failure by its officials to file financial disclosure statements even where the failures were one of several violations by the charter school. *Id.* Accordingly, we do not find that EUACS's failure to file timely Statements of Financial Interests in this case supports the denial of EUACS's request for the renewal of its Charter even when considered in conjunction with its other violations.

7. Lack of Highly Qualified Teachers

Pursuant to the NCLB, EUACS was required to have "highly qualified teachers" for core academic subjects. 20 U.S.C. §6319(a)(2); 34 C.F.R. §200.55(b); *Gillingham Charter School*,

CAB Docket No. 2016-11, p.53. As correctly recognized by the Hearing Officer, PDE required a “highly qualified teacher” to have a bachelor’s degree, a valid Pennsylvania teaching certificate, and demonstrate subject matter competency for the core content being taught. PDE’s Required Federal Reporting Measures (“RFRM”) report further defined a “highly qualified teacher” as one who holds a full certification, has at least a bachelor’s degree, has completed a content area major, has passed a content area test, and has completed teacher education coursework. EUACS was required to satisfy the requirement for “highly qualified teachers” from 2012 through the 2015-2016 school years, after which the requirement was discontinued by the Every Student Succeeds Act. The record shows that the reported percentages of EUACS’s courses taught by “highly qualified teachers” during the 2012 Charter term were 79% in 2012-2013, 80% in 2013-2014, 74% in 2014-2015 and 100% in 2015-2016.

EUACS argues that the NCLB did not contain a requirement that it employ “highly qualified” teachers for noncore academic subjects prior to Act’s repeal, and that the teacher quality data contained in Required Federal Reporting Measures reports prepared by the Department of Education for 2013-2016 were for “course assignment” and not for “core academic subjects.” See, Gillingham Charter School, CAB Docket No. 2016-11. Even if found to be in violation, however, EUACS alternatively argues that the violations are not actionable because they were not part of a wider pattern of significant violations of law.

Conversely, the School District argues that the foregoing findings were derived from Required Federal Reporting Measures reports published by the Pennsylvania Department of Education pursuant to MCLB data from EUACS. Because the purpose of the Highly Qualified Teacher page in the RFRM report is to specifically identify the percentage of courses taught by HQTs, the report establishes the absence of HQTs in EUACS’s core subject areas. The School

District also argues that there is no evidence that the Department failed to report HQT information in the correct manner or that the data pertained to anything other than courses in core subject areas. The CAB has previously relied upon RFRM reports when considering issues related to the employment of “highly qualified teachers” by a charter school due to the reliability of the sources of the data contained therein. See, Khepera Charter School v. The School District of Philadelphia, CAB No. 2018-01, pp. 24, 46-47. Here, the School District has established by a preponderance of the evidence that EUACS failed to retain highly qualified teachers in core academic subjects through the testimony of the School District’s Program Manager for Data and relevant RFRM and SPP Data File reports. Because EAUCS’s failure in that regard constituted a wider pattern of significant violations of law as set forth herein, its failure, in conjunction with its other violations, constituted a sufficient reason not to renew EAUCS’s Charter. See, Reading School District v. I-Lead Charter School, 206 A.3d at 48.

8. Student Health and Safety Violations/Failure to Maintain Medical and Dental Records/ Failure to Conduct Fire Drills

EUACS’s 2012 Charter required it to “adopt and implement a plan for providing school health services that complies with 24 P.S. §14-1401. *et. seq.* of the Public School Code and other Applicable Laws.” In this case, the record shows that EUACS’s “Student Health Services Policy” constituted the student health services plan submitted to the School District. 24 P.S. §14-1402(a), (b) provides as follows, in pertinent part:

24 P.S. §14-1402. Health services

- (a) Each child of school age shall be given... (1) a vision test by a school nurse, medical technician or teacher, (2) a hearing test by a school nurse or medical technician, (3) a measurement of height and weight by a school nurse or teacher, who shall use the measurement to compute a child's weight-for-height ratio, (4) tests for tuberculosis under medical supervision, and (5) such other tests as the Advisory Health Board may deem advisable to protect the health of the child. Vision tests shall be given at least annually and other tests at intervals established by the Advisory Health Board.

(b) For each child of school age, a comprehensive health record shall be maintained by the school district or joint school board, which shall include the results of the tests, measurements and regularly scheduled examinations and special examinations herein specified.

28 Pa.Code §23.1 further identifies required health services as follows:

§23.1. Required health services.

School districts and joint school boards shall provide the following health services for children of school age who are attending or who should attend an elementary, grade or high school, either public or private; and children who are attending a kindergarten which is an integral part of a local school district:

- (1) Medical examinations.
- (2) Dental examinations.
- (3) Vision screening tests.
- (4) Hearing screening tests.
- (5) Threshold screening tests.
- (6) Height and weight measurements.
- (7) Maintenance of medical and dental records.
- (8) Tuberculosis tests.
- (9) Special examinations.

Although 28 Pa.Code §23.3 permits private examinations to be conducted, 28 Pa.Code §23.8 requires schools to “maintain comprehensive medical and dental records of each individual child” including “all information the school obtains concerning the health of the child.”

The record in this case shows that EUACS’s “Student Health Services Policy” did not identify required examinations and screenings as set forth at 28 Pa.Code §23.1 *et. seq.* or when they were to occur. During a site visit on November 10, 2016, it was discovered that files for 8th

grade students contained no record of dental exams having been performed for two students. The review also revealed the absence of records for vision or hearing for three students, the absence of records for height and weight screening of three students, and the absence of records showing that scoliosis screenings had been conducted for four students during the 2015-2016 school year. The record is similarly devoid of any evidence that the missing screenings were provided by third party providers such as MACCS Health Services which provides nursing services to EUACS.

EUACS argues that because charter schools are not specifically mentioned at 24 P.S. §14-1402(b), it was not required to maintain student dental or medical records pursuant to that provision of the Public School Code which requires a “school district or joint school board” to maintain comprehensive health records for each student. EUACS asserts that had the General Assembly intended for 24 P.S. §14-1402(b) to apply to charter schools, it would have included that language in the statute as it has in other provisions of the Public School Code, Article XIV.

Notwithstanding EUACS’s contention that charter schools are not subject to the requirements of 24 P.S. §14-1402(b), the provisions of 24 P.S. §17-1732-A(a)(1) expressly state that “Charter schools shall be subject to the following: ... Article XIV.” For this reason, the CAB finds that EUACS was subject to Article XIV in its entirety pursuant to 24 P.S. §17-1732-A(a) and that the record supports the finding by the School District that EUACS failed to comply with the record-keeping requirements of Article XIV.

As to the School District’s finding that EUACS failed to properly document fire drills and bus evacuation drills, EUACS was required to hold fire drills at least once per month pursuant to 24 P.S. §15-1517(a). Charter schools using school buses for transportation of school children are also required to conduct two emergency evacuation drills each school year in

accordance with 24 P.S. §15-1517(d). Moreover, the “chief school administrator” is required to certify to the PDE on or before the tenth day of April of each year that the emergency evacuation drills and school security drills have been conducted. 24 P.S. §15-1517(e). In this case however, EUACS submitted only one PDE-401 Form applicable to the 2012 Charter term, for the 2015-2016 school year. The record further shows that the 2015-2016 PDE-401 was submitted nearly four months after the April 10, 2016 deadline.

EUACS asserts that 24 P.S. §15-1517 did not require it to certify its fire and school bus evacuation drills with the Department of Education for the 2012-2015 school years. Instead, it contends that 24 P.S. §15-1517(e) only imposed an annual requirement that each district superintendent certify to the Department of Education that the emergency evacuation drills had been conducted. EUACS contends that because it did not have a “superintendent,” the requirement did not apply. Instead, it argues that the requirement was amended in 2017 at 24 P.S. §15-1517(f) to require reporting by a “chief school administrator” which signaled the Legislature’s recognition that the prior version did not apply to charter schools. EUACS further asserts that the record shows it regularly conducted fire drills notwithstanding its lack of reporting.

Because the CSL has traditionally subjected charter schools to the certification requirements of 24 P.S. §15-1517, it does not find EUACS’s argument to be persuasive. However, EUACS produced evidence at the hearing in the form of fire drill logs and hearing testimony that it had regularly conducted fire drills. For that reason, the CAB does not find that EUACS’s failure to submit timely certifications pertaining to bus and fire drill, in unto itself, constituted a basis not to renew EUACS’s charter.

9. Insufficient School-Wide Special Education Screening

The School District/SRC found that EUACS had violated several regulations governing the provision of services and programs for children with disabilities enrolled in charter schools set forth by Chapter 711, including those requiring the establishment of written policies and procedures comprising of “systematic screening activities that lead to the identification, location and evaluation of children with disabilities enrolled in the charter school or cyber charter school.” 22 Pa.Code §711.21(b)(2). 22 Pa.Code §711.23 sets forth the requirements for such a screening system as follows:

22 Pa.Code §711.23. Screening

(a) Each charter school and cyber charter school shall establish a system of screening which may include prereferral intervention services to accomplish the following:

(1) Identification and provision of initial screening for students prior to referral for a special education evaluation, including those services outlined in subsection (c).

(2) Provision of peer support for teachers and other staff members to assist them in working effectively with students in the general education curriculum.

(3) Identification of students who may need special education services and programs.

(b) The screening process must include:

(1) Hearing and vision screening in accordance with section 1402 of the Public School Code of 1949 (24 P.S. § 14-1402) for the purpose of identifying students with hearing or vision difficulty so that they can be referred for assistance or recommended for evaluation for special education.

(2) Screening at reasonable intervals to determine whether all students are performing based on grade-appropriate standards in core academic subjects.

(c) Each charter school and cyber charter school may develop a program of prereferral intervention services. In the case of charter schools and cyber charter schools meeting the criteria in 34 CFR 300.646(b)(2) (relating to disproportionality), as established by the Department, the services are required and include:

(1) A verification that the student was provided with appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the Elementary and Secondary Education Act (ESEA) (20 U.S.C.A. § 6368(3)), and appropriate instruction in math.

(2) For students with academic concerns, an assessment of the student's performance in relation to State-approved grade level standards.

(3) For students with behavioral concerns, a systematic observation of the student's behavior in the school environment where the student is displaying difficulty.

(4) A research-based intervention to increase the student's rate of learning or behavior change based on the results of the assessments under paragraph (2) or (3), or both.

(5) Repeated assessments of achievement or behavior, or both, conducted at reasonable intervals, reflecting formal monitoring of student progress during the interventions.

(6) A determination as to whether the student's assessed difficulties are the result of a lack of instruction or limited English proficiency.

(7) A determination as to whether the student's needs exceed the functional ability of the regular education program to maintain the student at an appropriate instructional level.

(8) Documentation that information about the student's progress as identified in paragraph (5) was periodically provided to the student's parents.

(d) Screening or prereferral intervention activities may not serve as a bar to the right of a parent to request an evaluation, at any time, including prior to or during the conduct of screening or prereferral intervention activities.

EUACS asserts that the School District improperly expanded Chapter 711 and Department of Education guidance by interpreting them as imposing mandatory requirements.

Accordingly, it avers that the School District evaluated its renewal request based upon standards which exceeded those for which it was legally required to satisfy. EUACS additionally argues that 22 Pa.Code §711.23 only required it to establish a school-wide screening system which must include hearing and vision screening at reasonable intervals to determine if students are achieving grade-appropriate standards in core academic subjects. EUACS reasons that although Chapter 711 imposes minimal requirements for the screening process, it provides significant discretion to a charter school regarding the development of the process by imposing “limited and flexible” requirements. Conversely, it does not require a charter school to use a common assessment or data source, maintain a comprehensive list of interventions, develop specified methods of interventions, or use a school-wide tracking system to monitor progress.⁴

Here, the School District’s decision not to renew EUACS’s Charter was based, in part, upon what the Hearing Officer described as “highly recommended interventions” developed by the PDE, including the three-tier Response to Intervention (“RtI”) system through which students may move depending upon their needs and responsiveness to interventions. As testified to by the School District’s Accountability Program Specialist, the purpose of RtI is to identify students needing interventions early in the process so as to avoid having to later implement more restrictive interventions. To that end, RtI starts with a screening and identification process to identify students who might be having difficulty in certain areas. It continues by implementing appropriate interventions that are specific to the needs of the students. To be successful, the approach requires ongoing assessments and monitoring designed to determine whether the interventions being used are successful, as measured by student progression.

⁴ 22 Pa.Code §711.23(a) states that a “charter school **shall** establish a system of screening which **may** include prereferral intervention services...”. Subsection (b) states that “The screening process **must** include...”. Subsection (c) states that charter schools meeting the criteria in 34 CFR 300.646(b)(2)..., as established by the Department, **the services are required and include...**”.

Regardless of EUACS's contention that Chapter 711 does not require particular screening activities to be in place and that it is entitled to a degree of flexibility when developing screening mechanisms, the record shows that EUACS did not have an effective screening system in place prior to September 2016, the last year of its Charter term. In response to requests made to it during the CSO's November 10, 2016 site visit for common assessments, data points, a list of commonly used interventions, and school-wide tracking systems, EUACS failed to produce any type of common assessment other than a referral form. EUACS was unable to produce any completed referral forms to demonstrate that it had actually used the form as a screening tool. The record equally shows through the testimony of Ms. Ford and through various documents that EUACS did not utilize a RtI process or system prior to September 2016. Although the record arguably shows that EUACS used the MMS system to collect data through progress reports, EUACS failed to establish that the system had been used for the purpose of monitoring students prior to the 2016-2017 school year.

The record also shows that EUACS did not comply with various laws requiring parent participation in the IEP process, and that it did not document purported attempts to obtain such participation through methods including timely updates to Individual Education Plans ("IEPs). During a May 25, 2016 review of 40 IEPs, EUACS was found to have multiple deficiencies due to missing signatures or lapses in IEP dates, missing IEPs and Notices of Recommended Educational Placement ("NOREPs") for days on which EUACS was paid Special Education subsidy rates, and that it did not have fully compliant and equitable student admission policies in accordance with the CSL, the Public School Code or its Charter. For these reasons, we find by a preponderance of the evidence that EUACS failed to comply with Chapter 711 in a manner which enabled it to identify, evaluate and/or refer students with diverse learning needs.

10. Sunshine Act/ Charter Violations

The record shows that EUACS failed to publicly disclose the location and times of Board of Trustee meetings in 2013-2014, 2014-2015 and some meetings in 2015-2016, and failed to elect officers at public meetings pursuant to its Bylaws. The School District cites to *Khepera*, CAB No. 2018-01, *supra*, as permitting nonrenewal based upon a charter school's violations of its bylaws. In so asserting, the School District contends that the CAB wrongly decided that Sunshine Act violations cannot form the basis for nonrenewal in *I-Lead Charter School*, CAB Docket No. 2016-05.⁵

EUACS argues that the alleged failure to annually elect officers was trivial and cannot form the basis for nonrenewal due to the School District's failure to demonstrate that the omissions adversely affected school governance based upon the limited nature of the omissions. *See, I-Lead Charter School*, CAB Docket No. 2016-05, p. 34. EUACS similarly argues that any Sunshine Act violations were trivial, that it advertised its Board meetings through various media, had corrected the aforementioned deficiencies for its meeting on April 12, 2016 and thereafter held its Board meetings in the same room. EUACS, therefore, contends that the nonrenewal was unjustified because the exclusive remedy for Sunshine Act violations is to bring an action in the Court of Common Pleas, and because it had taken remedial actions as in *I-Lead Charter School*, CAB Docket No. 2016-05. *Id.*

Although the CAB acknowledged in *Khepera, supra* that violations of a charter school's bylaws and/or its charter can constitute grounds for nonrenewal, it also found, more specifically,

⁵ The Commonwealth Court in *Reading School District v. I-Lead Charter School*, 206 A.3d at 47, *supra*, did not directly address whether a charter school's violations of the Sunshine Act were a valid ground for revoking a charter due to exclusive jurisdiction lying with the local court of common pleas. Instead, the Court's analysis narrowly focused upon the issue of whether the CAB refused to consider the charter school's violations of the Sunshine Law. *Id.*

in *I-Lead Charter School, supra* that the CAB is not the proper forum in which to judge alleged Sunshine Law violations. *I-Lead Charter School*, CAB Docket No. 2016-05, p. 30.

Accordingly, the CAB is not inclined to disturb that decision in this case, particularly under the present circumstances where the record demonstrates EUACS's substantial compliance with the Sunshine Law in several material respects and its correction of other violations beginning April 12, 2016.

VII. Abuse of Discretion

EUACS asserts that the School District's decision not to renew the Charter was an abuse of discretion and was the result of "partiality, prejudice, bias and ill will" by the Hearing Officer. It contends the Hearing Officer's report reflected "a subjective and murky weighing and balancing of information and criteria which the School District's witnesses were incapable of interpreting or explaining without their notes." EUACS cites to the Renewal Rubric underlying the Hearing Officer's Report and the "highly questionable" basis from which it determined not to renew the Charter. EUACS's claim of bias and ill will is predicated upon the high number of allegations brought against it which it describes as "simply absurd." EUACS also cites to the Hearing Officer's "rubber stamping" of every factual and legal allegation as evidence of the Hearing Officer's bias.

The CAB notes from the outset that the record is devoid of any evidence of bias by the Hearing Officer. On the contrary, the SRC's ratification of the findings by the Hearing Officer was supported by objective evidence of record. The CAB's review of the record indicates that the Hearing Officer and SRC evaluated the nonrenewal of EUACS's Charter under the same framework which was applied evenly to every charter school under its jurisdiction which has sought renewal. The totality of the evidence therefore supports the School District's contention

that the framework under which EUACS's Charter was evaluated works to remove bias from the process by evaluating charter schools seeking renewal under the same set of standards.

VII. CONCLUSION

For the foregoing reasons, the CAB finds that the SRC's/School District of Philadelphia's nonrenewal of EUACS' Charter was proper under the CSL, and IS AFFIRMED.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
STATE CHARTER SCHOOL APPEAL BOARD

Eastern University Academy Charter School,	:	
	:	
Petitioner	:	CAB Docket No. 2018-04
	:	
v.	:	
	:	
School District of Philadelphia,	:	
Respondent	:	

ORDER

AND NOW, this th14 day of August 2019, in accordance with the vote⁶ of this Board at its meeting of June 18, 2019, it is hereby **ORDERED** that the appeal of the Eastern University Academy Charter School is **DENIED**, and that the nonrenewal decision of the School District of Philadelphia is **AFFIRMED**.


Pedro A. Rivera, Chair

⁶ The CAB unanimously voted to deny the appeal of Eastern University Academy Charter School at its June 18, 2019 meeting.