

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

PROPEL CHARTER SCHOOLS,	:	
Appellant	:	Docket No. CAB 2018-05
	:	
v.	:	
	:	Appeal from June 25, 2018 Notice
PITTSBURGH PUBLIC SCHOOLS,	:	of Denial of Application for
Appellee	:	Multiple Charter School
	:	Organization

OPINION

BACKGROUND and PROCEDURAL HISTORY

This matter comes before the Pennsylvania State Charter School Appeal Board (hereinafter “CAB”) pursuant to the Charter School Law, Act of June 19, 1997, P.L. 225, No. 22, as amended, 24 P.S. § 17-1701-A et. seq. (“CSL”) on appeal by Propel Charter Schools (“Propel”) from the June 25, 2018 Notice of Denial (“Denial Notice”) issued by the Pittsburgh Public Schools (“District”) which denied the May 4, 2018 Multiple Charter School Organization (“MCSO”) Application (“Application”) wherein Propel sought to consolidate eight of its pre-existing charter schools as a single MCSO pursuant to Section 1729.1-A of the CSL, 24 P.S. § 17-1729.1-A.¹ On July 16, 2018, Propel filed the appeal that is the subject of this Opinion. On July 31, 2018, the District filed the Certified Record. On August 29, 2018, the Secretary of the Department of Education appointed Sandra Stoner, Esquire, as the Hearing Officer for the case. She held conferences with the parties on September 27, 2018 and January 7, 2019, when she also issued an Order setting a schedule for briefing on the merits. On January 14, 2019, the parties

¹ Section 1729.1-A of the CSL was added by Section 10 of the Act of November 6, 2017, P.L. 1142 to permit the merger of existing charter schools into an MCSO.

filed a Joint Stipulation to supplement the record with Propel's MCSO Application, which had been inadvertently omitted from the July 31, 2018 filing.

Also, on January 16, 2019, the District filed a Motion to Supplement the Record with the School Performance Profile ("SPP")² scores and rankings issued by the Pennsylvania Department of Education ("Department") for the 2017 - 18 school year. The purpose of the Motion was to provide CAB with evidence that Propel Charter School - McKeesport ("Propel - McKeesport") – the only school among the eight applicant schools with an SPP score in the top quartile of charter schools in the Commonwealth – no longer was ranked in the top quartile as it had been for the 2015 – 16 and 2016 – 17 school years. Propel filed a Brief in Opposition to the Motion on January 23, 2019 and a Reply on January 30, 2019, arguing that the new information was not relevant to the Application.

On February 14, 2019, John D. Kelly, Esquire, was appointed to take over the Hearing Officer's role due to Hearing Officer Stoner's appointment to a new position. Due to this transition, the briefing schedule on the merits of the appeal was stayed pending a ruling on the District's Motion to Supplement the Record. On March 19, 2019, a Memorandum Order was issued granting the Motion to Supplement. On April 1, 2019, Propel appealed the Memorandum Order to the CAB.

² The SPP provides a school-level academic score for public schools, charter and cyber charter schools, and full-time comprehensive career and technical centers. The SPP scoring system is part of The Educator Effectiveness System (Act 82 of 2012) designed to evaluate both principals and teachers through classroom observations, teacher specific data, elective data, and building level data. In 2018, as a result of the U.S. Department of Education's approval of Pennsylvania's Every Student Succeeds Act, the SPP was changed to the "Act 82 Building Level Score." See, <https://www.education.pa.gov/Teachers%20-%20Administrators/Educator%20Effectiveness/SPP/Pages/default.aspx> (last visited April 16, 2020)

By Order dated March 20, 2019, an amended briefing schedule was set on the merits of the Appeal. The District's Brief was filed on or about April 1, 2019. Propel's Reply Brief was filed on or about April 16, 2019.

On May 21, 2019 both Propel's direct appeal to CAB of the Hearing Officer's March 19, 2019 Memorandum Order granting the District's Motion to Supplement the Record and its appeal of the District's decision to deny Propel's Application to establish an MCSO were argued before CAB.

On June 18, 2019, CAB voted 4 to 0 to deny Propel's appeal from the Hearing Officer's Memorandum Order allowing the record to be supplemented. Also, on June 18, 2019, CAB voted 3 to 1 to deny Propel's appeal of the District's decision to deny Propel's Application to establish an MCSO. However, CAB tabled the matter as a nonactionable vote because it determined, in accordance with its interpretation of the CSL, that the 3 to 1 vote did not constitute a valid action by CAB.

CAB consists of the Secretary of Education and six (6) members who are appointed by the Governor and with the consent of a majority of all the Senate members. Section 17-1721-A(a) of the CSL, 24 P.S. § 17-1721-A(a). Presently there are only six (6) total members of the CAB, including the Secretary of Education, because one of the positions on CAB is vacant. The CSL defines a quorum as "[a] majority of the members of [CAB]"; thus, four (4) members constitute a quorum. *See* 24 P.S. § 17-1721-A(b).

At CAB's June 18, 2019 meeting of CAB, Member Lee Ann Munger ("CAB Member Munger") recused herself from the vote because her children attend Propel. Additionally, the Department's Secretary recused himself from the vote,³ leaving four (4) CAB members which

³ Pursuant to Section 1729.1-A(f)(3) of the CSL, the Secretary is required to recuse himself from all appeals of

number was sufficient to constitute a quorum. CAB voted 3 to 1 to deny Propel's substantive appeal from the Department's denial of Propel's Application. CAB, however, tabled the matter for revote as its next meeting in July on the grounds that CAB's 3 to 1 vote to deny Propel's appeal constituted a nonactionable vote based on its interpretation of the CSL that a majority of the members of CAB are needed to constitute a quorum; however, a majority of the members of CAB are also needed to act, as provided for in Section 1721-A(b) of the CSL.⁴ On July 24, 2019, with the Department's Secretary and CAB Member Munger recusing themselves from the vote, CAB again voted on the substantive appeal resulting in another 3 to 1 vote to deny Propel's appeal, which CAB did not recognize as a valid action and so tabled the matter.

On September 6, 2019, Propel filed a Motion to Permit CAB Member Munger to Vote. On September 12, 2019, the District filed its response in opposition thereto. On September 25, 2019, Propel withdrew its Motion to Permit CAB Member Munger to vote.

On September 25, 2019, Propel filed a Motion to Allow Vote of 3-1 in this Matter As Proper arguing that the CSL does not require a majority vote of all CAB members to decide the matter before the quorum; and even if the CSL requires such, the recusals effectively reduce the total number of CAB members. On October 7, 2019, the District filed its response thereto.

At the October 22, 2019 meeting of CAB, the Motion to Allow Vote of 3-1 in this Matter As Proper was argued and voted upon by the same four participating CAB members, without

decisions by the Department of Education, and is not to participate in any hearing, deliberation or vote on any appeal of a decision made by the Department. 24 P.S. §1729.1-A(f)(3). The CSL, however, does not expressly require the Secretary to be recused in an appeal to CAB from a denial of an MCSO application by one or more chartering school districts. Given the Secretary's role on CAB and where, as is here, there are companion matters (Docket Nos. 2018-05 and 2018-06) involving appeals to CAB from denials of MCSO applications, the Secretary will act as agency head in a decision on an MCSO application submitted by the Department and will recuse himself from CAB deliberations and votes with respect to appeals from denials of an MCSO application by the Department, one or more chartering districts, or both.

⁴ Section 1721-A(b) of the CSL provides that "a majority of the members of [CAB] shall constitute a quorum, and a majority of the members of [CAB] shall have the authority to act upon any matter before [CAB]."

those who recused, as in prior Propel votes. CAB unanimously voted to deny the Motion to Allow Vote of 3 – 1 in this Matter as Proper. CAB then proceeded to vote on the appeal which resulted in another 3 to 1 vote to deny Propel's substantive appeal, and thus the matter was tabled for revote at the next meeting of CAB on December 3, 2019.⁵

On November 27, 2019, CAB issued a written order denying Propel's Motion to Allow the Vote of 3 – 1 in this Matter as Proper.

On December 18, 2019, Propel sought an allowance of appeal from an interlocutory order by permission and filed with CAB an application pursuant to Pa.R.A.P. 1311 seeking to have CAB's November 27, 2019 Order amended to include language required under 42 Pa.C.S. § 702(b). The District provided its response thereto on December 20, 2019. The District asserted that Propel's application was untimely filed because it was beyond 10 days after service of the Order, as provided for in 1 Pa. Code § 35.225, and that it did not meet the requirements of Section 702(b) permitting CAB to modify the November 27, 2019 Order to include interlocutory appeal language. On December 27, 2019, Propel filed its reply in opposition thereto. Argument was scheduled for CAB's next meeting on January 14, 2020.

Additionally, on December 26, 2019, Propel appealed from CAB's November 27, 2019 Order, based on an alternate position that CAB's Order was appealable as a matter of right as a collateral order, by filing in Commonwealth Court a Petition for Review of a Quasi-Judicial Order Dated November 27, 2019 in Charter Appeal Board Docket No. 2018-05 (Docket No. 1827 CD 2019). Propel sought judgment reversing CAB's Order of November 27, 2019, declaring CAB's vote on June 18, 2019, or any subsequent votes of 3 - 1 denying Propel's appeal

⁵ On December 3, 2019, CAB revoted on Propel's appeal, which resulted in the same 3 – 1 vote to deny the appeal, and as before, it was considered to be a nonactionable vote. Subsequently, CAB revoted at its January 14, 2020 meeting with the same voting outcome.

did not violate 24 P.S. § 17-1721-A(b), and was, therefore, a valid vote of CAB, thus requiring CAB to proceed to issue a written decision from which Propel may then appeal from the denial. Moreover, Propel sought similar relief by simultaneously filing a Petition for Review in the Nature of a Declaratory Judgment Complaint under the Commonwealth Court's original jurisdiction (Docket No. 710 MD 2019).

At CAB's meeting on January 14, 2020, CAB was prepared to hear argument on Propel's application filed pursuant to Pa.R.A.P. 1311 seeking to have CAB amend its November 27, 2019 Order to include language required to allow Propel to appeal from the order by permission. Propel, however, raised a jurisdictional issue asserting that due to its initiation of litigation in Commonwealth Court, CAB was not permitted to consider Propel's Application filed pursuant to Pa. R.A.P. 1311. Propel explained that it was of the revised position that CAB's November 27, 2019 Order constituted a collateral order, as provided in Pa. R.A.P 1313, which would allow Propel to appeal as of right. As a result, CAB moved to take no action on Propel's application, thereby having the request deemed denied.⁶

On February 7, 2020 Propel filed a Motion to Supplement the Record with the purpose of providing CAB with evidence of Propel Charter School – McKeesport's SPP score for the 2018-2019 and establishing that the applicant school is once again in the top 25% for 2018 – 19, based upon the updated MCSO Eligibility List. The District filed its response in opposition thereto on February 13, 2020. The District was of the position that CAB lacked jurisdiction to consider the Motion given the pending Commonwealth Court appeals; and, further, the District challenged the relevancy of the supplemental information.

Propel's Motion to Supplement the Record was scheduled to be argued at CAB's meeting

⁶ At the January 14, 2020 meeting of CAB, the members voted 4-0 to take no action in Propel's Application Pursuant to Pa.R.A.P. 1311 to Amend Orders to Include Language Required Under 42 Pa.C.S. § 702(b).

on February 25, 2020. However, on February 24, 2020, Propel withdrew its pending Motion to Supplement the Record.

On October 13, 2020, the Commonwealth Court heard argument in the matter of Propel Charter Schools v. Commonwealth of Pennsylvania, State Charter Appeal Board, Docket No. 1827 CD 2019, subsequently ruled that the 3-1 vote of CAB was proper, and issued an Order on November 20, 2020 which reversed CAB's November 27, 2019 Order. It was further ordered that Propel had (30) days from the date of the Court's Order to appeal from CAB's denial of Propel's substantive appeal.

Although CAB voted 3 – 1 on June 18, 2019 to deny Propel's substantive appeal, CAB did not issue a written decision denying the appeal in accord with Section 17-1729.1-A(f)(iii) of the CSL because of its interpretation of the CSL that a 3 to 1 vote was considered to be nonactionable. Given the Court's November 20, 2020 ruling, CAB now issues its written decision in support of its June 18, 2019 vote of 3 – 1 denying Propel's appeal, based on the Findings of Fact and Conclusions of Law as discussed below and also includes its decision in support of its May 21, 2019 vote of 4 – 0 denying Propel's appeal from the Hearing Officer's Memorandum Order allowing the record to be supplemented.

FINDINGS OF FACT

1. In February 2018, the Pennsylvania Department of Education ("Department") published an application form to be completed by charter schools seeking to establish an MCSO. (Official Notice, Department Records).⁷

⁷ Official notice of such matters as might be judicially noticed by courts is permissible under the General Rules of Administrative Practice and Procedure, 1 Pa.Code §35.173, which provides, in pertinent part, as follows:

§35.173. Official notice of facts.

2. A “Multiple Charter School Organization Application Guide” was published in conjunction with the application form. (Official Notice)
3. By way of its Application filed with the District on May 4, 2018, the following eight charter schools, all Pennsylvania nonprofit corporations, sought to consolidate and become Propel Charter School MCSO: Propel Schools (operating as Propel Charter School – Homestead); Propel Charter School - East; Propel - McKeesport; Propel Charter School - Montour; Propel Charter School - Northside; Propel Charter School - Pitcairn; and Propel Charter School – Hazelwood (collectively, “the Propel Schools”). (Joint Stipulation no. 1)
4. The Propel Schools are located at the following addresses: 129 East 10th Avenue, Homestead, PA 15120; 1161 Monroeville Ave, Turtle Creek, PA 15145; 2412 Versailles Avenue, McKeesport, PA 15132; 340 Bilmar Drive, Pittsburgh, PA 15205; 1500 Yost Boulevard, Pittsburgh, PA 15221; 1805 Buena Vista Street, Pittsburgh, PA 15212; 435 Agatha Street, Pitcairn, PA 15140; and 5401 Glenwood Avenue, Pittsburgh, PA 15207. The Propel administrative offices are located at 3447 East Carson Street, Pittsburgh, PA 15203. (Joint Stipulation no. 2)
5. The District is a public school district organized and existing under the Public School Code, 24 P.S. §§ 1-101 *et seq.*, having its administrative office at 341 South Bellefield Avenue, Pittsburgh, PA 15203. (Joint Stipulation no. 3)
6. On May 4, 2018, in addition to its Application submitted to the Pittsburgh Public Schools, Propel Schools also submitted an MCSO Application to Steel Valley School

Official notice may be taken by the agency head or the presiding officer of such matters as might be judicially noticed by the courts of this Commonwealth, or any matters as to which the agency by reason of its functions is an expert. . . .

District, Woodland Hills School District, Penn Hills School District, McKeesport School District, Montour School District and Gateway School District, in accordance with the CSL, 24 P.S. § 17-1729.1-A. (Joint Stipulation nos. 4 and 5)

7. Propel also submitted the Application to the Department, which received it on May 7, 2018. (Joint Stipulation no. 6)
8. The Application followed the standard application developed by the Department pursuant to 24 P.S. §17-1729.1-A(c), and pursuant to which each district and the Department had forty-five (45) days to adopt a resolution either to approve or deny the Application. (Official Notice, Department Records)
9. On June 19, 2018, the District provided a courtesy notice to Propel that its Application had been denied at a meeting of the School Board on June 18, 2018. (Joint Stipulation no. 8)
10. No other district responded to the Application within 45 days of receipt, and therefore, the Application was deemed approved by Steel Valley, Woodland Hills, Penn Hills, McKeesport, Montour, and Gateway school districts. (Joint Stipulation no. 9)
11. On June 20, 2018, the Department issued a denial of the MCSO Application. (Joint Stipulation no. 10)
12. On June 25, 2018, the District's solicitor issued the Denial Notice along with a Resolution dated June 18, 2018 from the Board of Public Education of the District denying the Propel Schools' Application. (Joint Stipulation no. 11)
13. On July 16, 2018, Propel filed the instant appeal to the CAB as provided for by the CSL. (Joint Stipulation no. 12)

14. Propel's Application relied on Propel – McKeesport as its lone qualifying school for purposes of the CSL requirement that, for an MCSO to be approved, at least one of its member schools must have an SPP score that is among the top twenty-fifth percentile of Pennsylvania charter schools as measured by the SPP for the most recent two (2) school years. (Application, question 1f)
15. At the time Propel filed its Application with Pittsburgh Public Schools (May 4, 2018) and Pittsburgh Public Schools issued its denial (June 18, 2018) which occurred during the 2017 – 18 school year, the two most recent school years for which SPP scores were available were the 2015 – 16 and 2016 – 17 school years.
16. For purposes of the Application, the “most recent two (2) school years” were 2016 – 17 and 2017 – 18.⁸ (Official Notice)
17. Propel – McKeesport qualified in the top twenty-fifth percentile for the 2015 – 16 and 2016 – 17 school years, but not for the 2017 – 18 school year. (Official Notice, Department Records; District's January 16, 2019 Motion to Supplement Record, Exhibit A hereto)
18. No other Propel school proposed for consolidation tested in the top twenty-fifth percentile in 2016 – 17 and 2017 – 18. (Application, question 1f; District's January 16, 2019 Motion to Supplement Record, Exhibit A hereto)

⁸ The record was supplemented with MCSO Eligibility List information for the 2017 – 2018 school year. The MCSO Eligibility List information for the 2018 – 2019 school year was also released, however, neither party stipulated to nor pursued supplementation of the record with the updated MCSO Eligibility List for the 2018 – 2019 school year for which scores were available as was done in a related matter before CAB, Propel Charter Schools v. Pa. Dep't of Educ. (Docket No. 2018-06). Here, the record was not supplemented to include the most recent MCSO Eligibility List reflecting SPP scores for the two most recent years of 2017 – 18 and 2018 – 19 such that CAB's consideration is constrained to the record before it, which for purposes of the instant Application comprises the two “most recent two (2) school years” as 2016 – 17 and 2017 – 18.

CONCLUSIONS OF LAW

1. The CAB has jurisdiction over this matter. 24 P.S. § 17-1729-A; *Northside Urban Pathways Charter School v. State Charter School Appeal Board*, 56 A.3d 80 (Pa. Cmwlth. 2012).
2. The CSL governs the charter application/approval process as well as the MCSO application/approval process. 24 P.S. § 17-1701-A *et. seq.*
3. The intent of the General Assembly in enacting the CSL was, *inter alia*, to establish and maintain schools that improve pupil learning, to increase learning opportunities for all pupils, and to hold charter schools accountable for meeting measurable academic standards. 24 P.S. § 17-1702-A.
4. The MCSO provision (“MCSO Law” or “Law”) of the CSL sets forth the requirements for multiple charter schools to organize themselves into a single educational organization. 24 P.S. § 1729.1-A
5. One of the requirements set forth in the MCSO Law provides that schools so organizing themselves must all have SPP scores among the top twenty-fifth percentile of Pennsylvania charter schools as measured by the SPP for the most recent year for which an SPP score is available. 24 P.S. § 1729.1-A(b)(1)(iii).
6. If a charter school’s SPP score ranking is not in the top twenty-fifth percentile as required by the MCSO Law, then it may become part of an MCSO only if at least one of the schools to be unified within the organization has an SPP score that was among the top twenty-fifth percentile of Pennsylvania charter schools as measured by the SPP for the most recent two (2) school years. 24 P.S. § 1729.1-A(b)(2).

7. Not all of the charter schools proposed for consolidation in Propel's Application had an SPP score in the top twenty-fifth percentile for the most recent year for which such scores were available. (Finding of Fact No. 14)
8. Propel failed to establish in its Application that at least one of its consolidating schools was among the top twenty-fifth percentile for the most recent two (2) school years for which such scores were available. (Findings of Fact No. 14 – 18)

DISCUSSION

I. Introduction

In the matter now before the CAB, an applicant for MCSO status, Propel, appeals the decision of a school district denying, on various grounds, its application. Some of those grounds include the governance structure of the MCSO, budgetary and funding concerns, and Propel's current inability to meet certain school performance criteria. In its appeal, Propel argues that the Department of Education, which developed the application, exceeded its statutory authority in creating unnecessary governance structure, budgetary and funding "hoops" through which Propel was unnecessarily required to "jump" in order to obtain MCSO status, and that therefore the denial of its application was not justified under the Law. In response, the District asserts that the Department's application was developed under the express language of the Law which allowed the Department both to establish criteria beyond the statute's four corners and to require that MCSOs satisfy them in order to operate. The District also argues that, regardless of the question of the Department's authority to impose extra-statutory MCSO criteria, Propel did not meet express *statutory* eligibility standards related to its member schools' academic performance.

II. Scope of Review and Burden of Proof

In reviewing a school district's denial of an application under the CSL, the CAB applies a *de novo* standard of review, which requires "a new hearing or a hearing for the second time, contemplating an entire trial in [the] same manner in which [the] matter was originally heard and a review of [the] previous hearing. On hearing 'de novo' [the] court hears [a] matter as [a] court of original and not appellate jurisdiction." *Capuano v. Capuano*, 823 A.2d 995, 1002 - 03 (Pa. Superior 2003) (quoting Black's Law Dictionary 649 (5th ed.1979)). "[D]e novo review ... entails full consideration of the case anew. The reviewing body is in effect substituted for the prior decision maker and redecides the case." *Commonwealth v. Virnelson*, 243 A.2d 464, 469 (Pa. Superior 1968). However, although the CAB applies a *de novo* scope of review, it also must "give 'appropriate consideration' to the findings of the District Board, while making an independent determination as to the merits of the charter school application." *West Chester Area School District v. Collegium Charter School*, 812 A.2d 1172, 1180 (Pa. 2002) (regarding charter school applications). Accordingly, in rendering a decision such as the instant one, the CAB must specifically articulate its reasons for agreeing or disagreeing with the school board's underlying findings. See, 24 P.S. § 17-1717-A(i)(6) (pertaining to charter school applications).

The degree of proof required to establish a case before an administrative tribunal is a preponderance of the evidence. *Lansberry v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). A "preponderance" is that quantity and quality of evidence demonstrating that an averment or allegation is more likely to be true than false. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854, 856 (Pa. 1949). If viewed on a balancing scale, a preponderance of evidence will tip the scale, however slightly, in favor of the allegation that is more likely to be true. *Id.*

III. Relevant Provisions of the MCSO Law

The Law contains the following provisions relevant to the merits of Propel's Application and this Appeal.

(b) (1) A charter school that, within either of the most recent two (2) school years, has failed to meet any of the following shall not be eligible to consolidate with another charter school:

(iii) A school performance profile score that is among the top twenty-fifth percentile of Pennsylvania charter schools as measured by the school performance profile for the most recent year for which a school performance profile score is available.

(2) A charter school that has failed to meet any of the requirements of paragraph (1) may consolidate if the consolidation includes a charter school demonstrating that it has satisfied such requirements for the most recent two (2) school years.

(c) Within ninety (90) days of the effective date of this section, the department shall develop and issue a standard application form that multiple charter school organization applicants must submit to the department and to the local board of school directors of each school district that granted the initial charter of any charter school in the proposed consolidation. The application form shall contain the following information:

(4) An organizational chart clearly presenting the proposed governance structure of the multiple charter school organization, including lines of authority and reporting between the board of trustees, chief administrator, administrators, staff and any educational management service provider

(5) A clear description of the roles and responsibilities for the board of trustees

(6) A clear description of the method for the appointment or election of members of the board of trustees.

(7) Standards for board of trustees performance, including compliance with all applicable laws, regulations and terms of the charter.

(9) Any other information as deemed necessary by the department.

(f) Appeals shall be as follows:

(2) In considering an appeal under this section, the appeal board shall

- (i) Review the decision made by the ... school district on the record as certified by the entity that made the decision being appealed, provided that the appeal board may allow ... a school district or the applicant for consolidation to supplement the record if the supplemental information was previously unavailable.

24 P.S. § 1729.1-A.

MCSO APPLICATION PROVISIONS

The Application requires the following information:

8b. Describe the process for the appointment or election of members of the MCSO Board of Trustees. How will appointment or election procedures ensure appropriate representation from individual charger schools? *Applicants must include both a listing of the proposed Board membership (included as a required attachment) and a clear description of the method for the appointment or election of members of the Board of Trustees.* (Italics in the original.)

8c. Describe how will the proposed merger support the Board of Trustees' capacity to govern the charter schools within the MCSO. *Applicants must include a clear description of the roles and responsibilities for the Board of Trustees*" (Italics in the original.)

10a, line 28. [State the] Number of students receiving special education services.

10b. Special Education Historical and Current Year School Enrollment Detail (*include counts by primary disability only; no student should be counted in multiple categories*) (italics in the original)

- Autism
- Deaf-Blindness
- Deafness
- Emotional Disturbance
- Hearing Impairment
- Intellectual Disability
- Multiple Disabilities
- Orthopedic Impairment
- Other Health Impairment

Specific Learning Disability
Speech or Language Impairment
Traumatic Brain Injury
Visual Impairment (incl. blindness)

10c. Describe in what ways the merger may impact ... services to students receiving special education services

10e. Special Education Projected Enrollment Detail (*include counts by primary disability only; no student should not [sic] be counted in multiple categories*)

Autism
Deaf-Blindness
Deafness
Emotional Disturbance
Hearing Impairment
Intellectual Disability
Multiple Disabilities
Orthopedic Impairment
Other Health Impairment
Specific Learning Disability
Speech or Language Impairment
Traumatic Brain Injury
Visual Impairment (incl. blindness)

10h. Are class sizes and caseloads for students receiving special education services at appropriate levels to provide FAPE (Free and Appropriate Education), as per IDEA and Chapter 711)?

Application, questions 8b. – 10h.

In the discussion below, each of Propel's arguments appealing the District's denial of its MCSO Application will be addressed in light of the above-quoted provisions of the MCSO Law and the Application.

IV. Propel's Grounds for Appeal: The District's Motion to Supplement the Record

On January 22, 2019, the District filed a Motion to Supplement the Record with the SPP scores issued by the Department for the 2017 - 18 school year. The MCSO Eligibility List

containing the 2017 – 18 school year SPP scores was not updated until January 9, 2019. The purpose of the Motion was to provide CAB with evidence that Propel - McKeesport – the only school among the eight applicant schools with an SPP score in the top quartile of charter schools in the Commonwealth – no longer was ranked in the top quartile as it had been for the 2015 – 16 and 2016 – 17 school years.

Regarding CAB’s review of the record in an appeal, the CSL related to MCSO applications provides that CAB shall “[r]eview the decision made by either the department or the school district on the record as certified by the entity that made the decision being appealed, provided that the appeal board may allow the department, a school district or the applicant for consolidation to supplement the record if the supplemental information was previously unavailable.” 24 P.S. 17-1729-A(f)(1)(i). The Commonwealth Court has helped frame what “previously unavailable” means by stating that it “cannot include information that could have been obtained and submitted for inclusion into the record prior to the district’s vote.” *Carbondale Area School District v. Fell Charter School*, 829 A.2d 400, 405 (Pa. Cmwlth. 2003).

It is without question that the information related to SPP scores issued by the Department for the 2017 - 18 school year was previously unavailable and could not have been obtained or submitted for inclusion in the record prior to the District’s decision to deny Propel’s MCSO Application. As such, the evidence related to the Charter Schools Meeting Multiple Charter School Organization Eligibility Criteria – 24 P.S. § 17-1729.1-A, containing 2016 – 17 and 2017-18 data, appended to the District’s Motion to Supplement, clearly constitutes admissible supplementary evidence. Thus, the Hearing Officer properly granted the District’s Motion to Supplement, and the updated MCSO Eligibility List containing the 2017 -18 school year SPP scores shall be admitted into the record.

As discussed below and more further in other sections within this decision, given the supplemented information that is now part of the record -- the updated MCSO Eligibility List containing 2017 -18 school year SPP scores -- CAB must determine the relevance and materiality of the supplemented information on the substantive appeal.

A charter school's SPP score is a relevant factor because CAB is statutorily required to consider, when deciding upon an MCSO application, whether the MCSO has a charter school meeting the threshold two-year requirement. The approval of a proposed MCSO is disallowed unless the application includes at least one charter school that has met the SPP threshold of having a charter school within the twenty-fifth quartile of Pennsylvania Charter Schools for the two most recent school years for which scores are available. 24 P.S. § 17-1729.1-A(b). Therefore, the most recently available SPP data is a relevant consideration for CAB in this matter.

V. **Propel's Grounds for Appeal: Pittsburgh Public Schools' Denial of Propel's MCSO Application**

A. *Denial of the Application based on criteria not specified in the Law.*

Generally, the appeal asserts that Propel's Application comprehensively provided all information required by the language of the statute, faulting the District for denying the Application based on a failure to meet criteria not specifically set forth in the Law. The District responds that the Law gives the Department total discretion to require additional information in the form application it was required to develop and publish, and so the District's concerns regarding issues not addressed in the Law are as legitimate and binding as the statutory issues. Neither party cites caselaw directly supporting its position, although the District generally references *Summit School, Inc. v. Commonwealth, Department of Education*, 108 A.3d 192 (Pa.

Cmwlth. Ct. 2015) for the proposition that an agency is entitled to deference in its interpretations of legislation within its area of expertise.

The plain language of Section 17-1729(c)(9) of the MCSO Law provides that the Department may require “any other information [it] deem[s] necessary” to be included in an MCSO Application. 24 P.S. § 1729.1-A(c)(9). Through this language, the information required by the Application became information required by the MCSO Law. Thus, MCSO eligibility criteria developed by the Department and not by the General Assembly may nonetheless provide grounds for denial of an MCSO Application.

In its Brief, Propel further asserts that “in reality, this provision is an invitation for the Department to request ‘information’[,],” (Propel’s Brief, p. 13, fn. 3) implying that a “request for information” does not become a *requirement* of the MCSO Law. However, the MCSO Law does not state this. Subparagraph (9) of Section 17-1729(c) does not differentiate between information specified in the preceding eight (8) sub-paragraphs and information that the Department, in its expertise, would see fit to additionally require. Nowhere does the MCSO Law subordinate Department-created eligibility criteria to legislated eligibility criteria. Rather, as is frequently the case in legislation pertaining to administrative agencies, the Department’s expertise is a resource on which the General Assembly relies in order to carry out the statutory purpose to the same degree as the statutory provisions themselves.

In this case, the General Assembly deferred to the Department’s particularized familiarity with the operations of individual charter schools across multiple school districts, and therefore enabled the Department to employ that knowledge to further ensure the quality of the education to be offered by an MCSO. Accordingly, Propel’s arguments in support of its appeal are without

merit to the extent that they fault the District for denying the Application for reasons not specified in the Law.

B. The District did not allow Propel an opportunity to clarify deficiencies.

While its Petition of Appeal raised an issue regarding a lack of any opportunity to clarify for the District any deficiencies in the Application, Propel's Brief did not pursue its position on that point. Therefore, its argument will be deemed to have been abandoned.⁹

C. Propel's submission of its Application to the Department seven (7) days after submitting it to the District.

Propel's argument on this point is supported by the MCSO Law to the extent that it contains nothing stating that failure to follow sequencing instructions as to filing dates of an MCSO Application shall invalidate the Application. However, the Application Guide published by the Department explicitly states that "the most reasonable way to implement the [MCSO's] requirements relating to submission and review is through a sequential review." (February 2018 Application Guide, p. 2). The Application Guide goes on to state that "[a]fter approval by the chartering school district(s) (or CAB) or the passage of 45 days, the MCSO Application is submitted to the Department." (February 2018 Application Guide, p. 2). While the Application Guide's language is not expressed as a command or mandate (e.g., "the review shall be sequential"), no reasonable reading of that language would interpret it as providing an applicant with discretion in the timing of its filings, and an applicant choosing its own filing sequence would necessarily do so at its peril. Therefore, Propel's argument in this regard provides no grounds on which to reverse the denial of its Application.

⁹ Significantly, the MCSO Law does not contain a provision requiring a district to afford a rejected applicant an opportunity to supplement or clarify its application at any point after filing.

D. "Administrative efficiencies" and "educational equities" demonstrated in the Application.

The District's Brief does not elaborate on its denial of the Application on grounds related to "administrative efficiencies" or "educational equities." Therefore, the CAB will not conclude that Propel's Application was lacking in these areas.

E. Racial makeup of the Board of Trustees; Friends of Propel membership as prerequisite to membership on Board.

The MCSO Law calls for an applicant to provide a "clear description" of both "the roles and responsibilities for the board of trustees" and "the method for the appointment or election of members of the board of trustees." 24 P.S. § 17-1729.1-A(c)(5) and (6). Citing these provisions, the District found that the Application "did not clearly delineate the composition of the Board of Trustee [sic] or the manner of selection." (Notice of Denial, p. 1). It further found that Propel's Board composition was not "reflective of the enrollment of Pittsburgh students" in that it included only two African-American members. (*Id.*) Finally, the District took note that the MCSO's by-laws permitted only members of an organization called "Friends of Propel" to serve on Propel's Board of Trustees. (*Id.*) The District expressed its concern that the Application did not indicate whether this group was "fundraising in nature" and did not otherwise provide details about the group. (*Id.*)

In its appeal, Propel argues that it fully complied with the reporting requirements for the MCSO's governance *structure*. It points out that the MCSO Law does not require the disclosure of the *criteria* by which the MCSO will measure the qualifications of persons governing within that structure, and that nothing in the MCSO Law concerns itself with the racial composition of an MCSO's Board. Propel is correct on these points. While an applicant's duty to disclose a selection method for trustees would seem to imply a district's power to disapprove that method,

the MCSO Law does not, in fact, contain express language indicating that the selection method must be acceptable to the reviewing district. Moreover, there are no criteria expressed in the Application to enable an applicant to know and adopt for its MCSO the components of a selection method that would be acceptable to the Department (or a school district). Thus, neither the Law nor the Application contemplate disapproval of an MCSO based on a district's suspicions about potential improprieties in an applicant's selection methods for its Board.

Regarding the Trustee selection and "Friends of Propel" issue, it is important to note that there are only four relevant requirements expressed in the MCSO Law¹⁰ for the contents of an Application: (1) "[a]n organization chart clearly presenting the proposed governance structure ... including lines of authority and reporting between the board of trustees" and other administrators and staff; (2) "[a] clear description of the roles and responsibilities for the board of trustees ..."; (3) "[a] clear description of the method for the appointment or election of ... trustees"; and (4) "[s]tandards for board of trustees performance...." 24 P.S. § 17-1729.1-A(c)(4) – (7). The District's concerns with the Application's lack of eligibility information for the Friends of Propel group do not easily fall within any of these four categories of information. As Propel argues, none of the above-cited statutory provisions contain racial composition mandates for a board of trustees. Rather they require disclosure of only the hierarchy, roles, *method* of appointment, and performance standards for trustees (which standards would only apply post-appointment). Again, these provisions require only a *disclosure of information* and do not express *trustee eligibility criteria* on which an Application will rise or fall. Accordingly, at least as expressed in the Notice of Denial of the Application, the District's concerns about the

¹⁰ Departing from its prior argumentation strategy, the District does not invoke section 17-1729(c)(9) as grounds for requiring additional information above and beyond the statute's four requirements about Trustees.

“Friends of Propel” organization and the racial makeup of Propel’s Board did not provide grounds on which to deny the Application.

F. Equitable distribution of funding for District students.

The District argues that the Application failed to provide for equitable distribution of funding for District students within the MCSO, and thereby failed to meet a criterion that the Department required pursuant to its authority under section 1729.1-A(c)(9). Under that criterion, the application form stated that “[t]he formation of an MCSO should be guided by a commitment to equitable, high-quality educational opportunities for students; ... and streamlined governance that promotes transparency and accountability.” (MCSO Application Guide, p. 3). The form went on to specify that the executive summary portion of an application “must include a reflection upon ways in which the merger may increase educational equity for all students and the anticipated impact upon student achievement and assessment.” (MCSO Application, p. 3).

Referencing this criterion, the District points out that its annual per-student expenditure for charter school students is approximately \$14,000 per regular education student and \$24,000 per special education student, that its students would comprise over 25% of Propel’s student population, and that therefore “the stakes for the District” in ruling on the MCSO “were quite high.” (District’s Brief on the Merits, p. 26.) The District argues that Propel’s Application does not fulfill the general transparency and accountability goals for Trustees as reflected in the Department’s directions for completing the Application form. However, the District acknowledges that, in using the term “equitable” with reference to “educational opportunities,” the Law is not expressly speaking of the equitable distribution of tax dollars in proportion to the number of students from a given District enrolled in the MCSO. (District’s Brief on the Merits, pp. 26 – 27.)

The District's acknowledgement is appropriate. While it may certainly be expected or at least hoped that per-student funding in an MCSO would be proportionate to the gross amount of funding paid over by each student's home school district, the general term "educational equity" as used in the Application cannot be so narrowly construed. Financial equities may certainly comprise part of the "equities" contemplated by the Application's language, but a perceived deficiency in an application's transparency on that issue does not provide independent grounds on which to deny an MCSO application. Therefore, the Notice of Denial was not supported in that respect.

G. Budgetary concerns.

The District also listed budgetary and financing concerns within its discussion of the bases for its denial of the Application. For instance, the District was concerned that a projected 22% decrease in special education funding revenue would lead Propel to under-fund special education services. In response, Propel asserts that nothing in the MCSO Law or the Application required it to disclose any additional information over and above the information it did disclose regarding its budget and expenditures. Moreover, Propel cites prior CAB decisions, *e.g.*, *In re: Gillingham Charter School*, CAB Docket No. 2010-7, for its policy that "CAB has historically specifically rejected school district attempts at the requirement of minutiae from a charter school applicant in the description of their special education compliance."

While the District's concerns regarding special education administration and Propel's calculations as to special education funding are not baseless, it is important to note that nothing in section 17-1729(c) addresses or even mentions budgetary issues. Thus, for such issues to be an enforceable basis for denying an MCSO Application, it must be assumed that section 17-1729(c)(9) gave the Department authority to require both the disclosure of such information in an

application as well as an explanation of the Applicant's budget calculations. However, the application form does not require such explanations, but rather follows the CAB's general hands-off approach to a given school district's specific budgetary concerns regarding an MCSO application. Accordingly, such concerns did not provide a basis for denial of Propel's Application.

H. Propel – McKeesport's SPP score ranking.

As indicated above, in order to be approved as an MCSO, Propel is required to have at least one of its member schools listed among the top quartile of Commonwealth charter schools' SPP score rankings. At the time of the filing of the Application, the school on which Propel was relying was Propel – McKeesport, which had top-quartile status for the 2015 – 16 and 2016 – 17 school years. During the course of CAB's review process in the instant matter, it granted the District's Motion to Supplement the record with official Department statistical information showing that Propel – McKeesport had fallen from the top quartile for the 2017 – 2018 school years, which information was "previously unavailable"¹¹ as that term is used in section 17-1729.1-A(f)(2)(i).

In opposing the supplementation of its Application record with the 2017 – 18 SPP rankings, Propel argues that such rankings were not relevant to the Application on the date it was filed. Propel's position was effectively that, even though it does not appear in the actual text of the CSL, the qualifier "as of the date of the Application" must be read into the "most recent two (2) school years" phrasing. Propel argued that any other reading would produce an "absurd result" because "the overall charter school application process contained in the entirety of the

¹¹ The term "previously unavailable" under the Law has been defined to include information that was "not accessible, unknown, or not discernable with due diligence." *Pocono Mountain Charter School, Inc., v. Pocono Mountain School District*, 88 A.3d 275, 291 (Pa. Cmwlth. Ct. 2014). Propel does not allege that the SPP rankings for 2017 – 18 were available on the date of its Application or the filing of its Appeal.

[Charter School Law]” was to be more streamlined, time-efficient, and retrograde to the “moving target” that would be created by allowing an Application to be judged by each new SPP ranking for each new school year during which the Application is pending. (*Propel's Reply Brief*, p. 2.) Propel acknowledged that the MCSO Law has not been tested by an appellate court but cited, as analogous, cases interpreting other provisions of the CSL. For example, in *Souderton Area School Dist. v. Souderton Charter School Collaborative*, 764 A.2d 688 (Pa. Cmwlth. Ct. 2000), the Court ruled that a charter school application could not be denied on the grounds that, by the time the application was addressed by CAB, the school had lost its prospective lease agreement for its proposed brick and mortar facility. As Propel pointed out, the Court effectively held that the application was to be judged as of the date it was initially filed.

Contrary to Propel's assertion, Propel – McKeesport's loss of qualifying status under 24 P.S. § 1729.1-A(b)(2) is fatal to its Application under both the plain language of Section 1729.1-A and the legislative intent of the MCSO Law which, in relevant part provides:

It is the intent of the General Assembly, in enacting this article, to provide opportunities for teachers, parents, pupils and community members to establish and maintain schools that operate independently from the existing school district structure as a method to accomplish all of the following:

- (1) Improve pupil learning.
- (2) Increase learning opportunities for all pupils.

- (5) Provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system.
- (6) Hold the schools established under this act accountable for meeting measurable academic standards

24 P.S. § 17-1702-A(1), (2), (5) and (6).

In support of its intent to hold charter schools accountable for meeting measurable academic standards, it appears that the General Assembly enacted the SPP score criteria in § 17-1729.1-

A(b)(1) and (2) as quality-control measures for schools seeking to consolidate. If an applicant school could not demonstrate its success as measured by its ranking, then it would not be qualified to expand itself through the MCSO process. To hold that the CAB may only consider the SPP score rankings from the two years immediately prior to the application date would be inconsistent with the legislative intent to improve learning and learning opportunities, and to hold charter schools to measured standards. As the intent expressed in section 17-1702-A(1) and (2) for increased learning and learning opportunities is a continuing goal not limited to a single point in time, the issue of the quality of learning being provided by schools proposing to consolidate would seem to be *always* relevant. Therefore, SPP rankings would also be always relevant.

Propel also argued that its Application should not be denied because it has been prejudiced by the length of the MCSO approval process vis-à-vis the 2017 – 18 SPP rankings, and that hypothetically it could have obtained its MCSO status if only that process had been more streamlined. While such a hypothetical may be accurate, it does not negate the fact that the statute contains built-in disqualifiers precluding MCSO eligibility for any applicant whose component schools fail to meet SPP ranking criteria during a period of time that is relative to the *date of approval* of the MCSO and not the *date of its application*. It also does not negate the fact that the express purpose of the Law is to promote quality in the education and learning opportunities being offered to families through the charter school system. That need for quality seems not fixed in time but always extant, and the MCSO process established in the Law was not written for the convenience of MCSOs attempting to form, but rather to regulate their caliber and promote educational excellence for the benefit of students. While the General Assembly

intended to promote expanded educational choices for students and parents, it clearly did not intend to do so at the expense of educational quality.

For purposes of the Application, the “most recent two (2) school years” were 2016 – 17 and 2017 – 18; and, given as much, Propel does not meet the application requirements for an MCSO under 24 P.S. § 17-1729.1-A(b)(1) because its application does not reference a school within the twenty-fifth quartile of Pennsylvania Charter Schools for the two most recent school years for which scores are available, as is evidenced by the updated MCSO Eligibility List.

CONCLUSION

Upon giving due consideration to the findings of the School Board, the evidentiary record, and the requirements of CSL, the CAB finds that the District’s denial of the MCSO Application in this case was proper. Accordingly, the following Order will be entered:

Exhibit “A”

COMMONWEALTH OF PENNSYLVANIA
STATE CHARTER SCHOOL APPEAL BOARD

CAB DOCKET NO. 2018-05

PROPEL CHARTER SCHOOLS,

Petitioner,

v.

SCHOOL DISTRICT OF PITTSBURGH,

Respondent.

RECEIVED

JAN 18 2019

PDE Office of Chief Counsel

MOTION TO SUPPLEMENT THE RECORD

Filed on Behalf of Respondent

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

PROPEL CHARTER SCHOOLS,	}	
	}	
Petitioner,	}	
	}	
v.	}	CAB DOCKET NO. 2018-05
	}	
SCHOOL DISTRICT OF PITTSBURGH	}	
	}	
Respondent.	}	

MOTION TO SUPPLEMENT THE RECORD

AND NOW, comes the Respondent, School District of Pittsburgh, ("District") by and through its Solicitors, Ira Weiss, Esquire, Jocelyn P. Kramer, Esquire, Lisa M. Colautti, Esquire and Weiss Burkardt Kramer LLC, and files this Motion to Supplement the Record, pursuant to 1 Pa. Code § 35.177 of the General Rules of Administrative Practice and Procedure in the above-referenced matter as follows:

BACKGROUND

1. On May 4, 2018, Propel Charter Schools, ("Propel") submitted an application to the District for approval of a Multiple Charter School Organization ("MCSO") pursuant to Section 1729.1-A of the Charter School Law.

2. Propel also avers it submitted an MCSO application to the Pennsylvania Department of Education ("PDE") on or around May 7, 2018. Approval of all chartering districts is required, followed by PDE's approval, for consolidation of charter schools as an MCSO.

3. On June 19, 2018, the District informed Propel by way of a letter that the Board of Public Education voted to deny Propel's MCSO application. (Exhibit A to Petition of Appeal.)

4. On June 25, 2018, the District issued a formal Notice of Denial of the Propel MCSO application. (Exhibit C to Petition of Appeal.)

5. On June 20, 2018, PDE issued a formal decision denying Propel's MCSO application. (Exhibit B to Petition of Appeal.)

6. Propel filed a Petition of Appeal from the District's denial of its MCSO application to the State Charter Appeal Board ("CAB") and this Honorable Hearing Officer was assigned.

7. Propel also filed a Petition of Appeal from PDE's denial of its MCSO application. That appeal is proceeding sequentially with Propel's appeal of the District's denial at CAB Docket No. 2018-06.

8. On July 31, 2018, the District filed Volumes I through XI of the Certified Record, comprised of Propel's MCSO application and related documents.

9. On or around January 14, 2019, the parties caused to be filed a joint stipulation to supplement the record with Propel's MCSO Application, a document consisting of 92 pages, which was inadvertently omitted from the Certified Record.

10. On or around January 10, 2019, the District discovered the list of "Charter Schools Meeting Multiple Charter School Organization Eligibility Criteria—24 P.S. § 17-1729.1-A" ("MCSO Eligibility List"), consisting of 3 pages on the PDE website. The MCSO Eligibility List is attached hereto, made part hereof and marked Exhibit A.

11. The District seeks to supplement the record in this matter with the MCSO Eligibility List as a document "previously unavailable" as defined under Section 1717-A(d)(6) of the Charter School Law that governs this appeal.

12. One or more of the schools to be consolidated in an MCSO are required to meet "a school performance profile score that is among the top twenty-fifth percentile of Pennsylvania charter schools as measured by the school performance profile for the most recent year for which a school performance profile score is available," under Section 1729.1-A(3)(b)(1)(iii).

13. Although one of the schools to be consolidated in Propel's MCSO met that criteria at time of application, none of Propels' schools meet that standard now.

14. This information is critical to CAB's determination of whether Propel's application meets the standards of the Charter School Law as enacted by the Legislature, and it must be included in the Record. Both parties should be given the opportunity to argue its relevance and to argue the appropriate interpretation of the Charter School Law, as this is a question of first impression for CAB.

ARGUMENT

The MCSO Eligibility List which the District seeks to enter into the record of this appeal is relevant to a stated requirement for a charter school consolidation to be considered under Section 1729.1-A of the Charter School Law ("CSL"). The relevant portion of the CSL is as follows:

(b)(1) A charter school that, within either of the most recent two (2) school years, has failed to meet any of the following shall not be eligible to consolidate with another charter school:

(i) Requirements for student performance set forth in 22 Pa. Code Ch. 4 (relating to academic standards and assessment).

(ii) Accepted standards of fiscal management or audit requirements.

(iii) A school performance profile score that is among the top twenty-fifth percentile of Pennsylvania charter schools as measured by the school performance profile for the most recent year for which a school performance profile score is available.

(2) A charter school that has failed to meet any of the requirements of paragraph (1) may consolidate if the consolidation includes a charter school demonstrating that it has satisfied such requirements for the most recent two (2) school years.

24 P.S. § 17-1729.1-A(b)(1)(i) through (b)(2).

When Propel applied in May 2018, one of its eight proposed schools to be merged into the MCSO was in the top twenty-fifth percentile of Pennsylvania charter schools as measured by the school performance profile for the two most recent school years for the scores available at that time. Propel-McKeesport met the standard and allowed the MCSO to qualify under this requirement.

However, while Propel's application remains under consideration on appeal and before the application has been approved and the charter awarded, additional school performance profile data has become available. Now, according to the two most recent school years available, none of the proposed Propel schools to be consolidated, indeed, no Propel schools at all, are in the top quartile of scores for the two most recent school years available according to PDE's data. The District became aware of this data on PDE's website on or about January 10, 2019, as evidenced by the date the District visited and retrieved the MCSO Eligibility List as documented on Exhibit A.

Both parties should have the opportunity to argue whether the MCSO Eligibility List is relevant to Propel's application. Both the District and PDE will undoubtedly take the position

that it is; Propel will undoubtedly take the position that it is not. Regardless, CAB must be able to review the list as part of the Certified Record, to consider the parties' arguments and to analyze its application to this question of first impression under this new Section of the CSL. Neither this Honorable Hearing Officer nor CAB can properly consider whether Propel remains eligible to consolidate under Section 1729.1-A, unless it can review PDE's most current MCSO Eligibility List to see whether it applies to Propel's pending application.

This Honorable Hearing Officer and CAB have discretion to supplement the record with the MCSO Eligibility List under the plain language of the CSL, pursuant to Section 1717-A(6). "The appeal board shall have the discretion to allow the local board of directors and the charter school applicant to supplement the record if the supplemental information was previously unavailable." 24 P.S. § 1717-A(6).

Propel filed its application to consolidate to the District on May 4, 2018. Propel filed its application to consolidate to PDE on or about May 7, 2018. The District denied Propel's application on June 19, 2018 and issued a formal Notice of Denial on June 25, 2018. PDE issued its formal denial on June 20, 2018. Propel was deemed eligible to apply for an MCSO based on school performance profile scores from 2015-2016 and 2016-2017, as those scores were the "two most recent school years available" at the time the application was filed. Propel then appealed to CAB. The District filed the Certified Record on July 31, 2018.

The school performance profile scores for the 2017-2018 school year were released by PDE sometime in late 2018; PDE made available the MCSO Eligibility List on its website sometime in late 2018 or early 2019. This list contains the charter schools in Pennsylvania which were in the top quartile of school performance profile scores in the two most recent school years, namely

2016-2017 and 2017-2018, now that the scores are available for the most recent school year. The District became aware and accessed the MCSO Eligibility List on January 10, 2019. By reviewing the chronology listed above, the District could not have included the MCSO Eligibility List in the Certified Record filed on July 31, 2018 because the list was not available from PDE on July 31, 2018. The scores and data needed to create the list were not available at the time the District filed the Certified Record.

This list is publicly available on PDE's website, is directly relevant to the stated requirements of the CSL for the formation of an MCSO, and as such should be added to the Certified Record in this matter for the Hearing Officer and CAB to review. The CSL gives CAB discretion to do just that. The relevance of this list is a matter of law and statutory interpretation of the CSL for the parties to argue on their Briefs on the merits of this appeal.

WHEREFORE, for all the foregoing reasons, the School District of Pittsburgh _____
respectfully requests the Hearing Officer grant the District's Motion to Supplement the
Record with the MCSO Eligibility List, as presented.

Respectfully submitted,

By: Ira Weiss
Ira Weiss, Esquire
Pa. I.D. #17408

By: Jocelyn P. Kramer
Jocelyn P. Kramer, Esquire
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COMMONWEALTH OF PENNSYLVANIA
STATE CHARTER SCHOOL APPEAL BOARD

PROPEL CHARTER SCHOOLS,)
)
Petitioner,)
)
v.)
)
SCHOOL DISTRICT OF PITTSBURGH)
)
Respondent.)

CAB DOCKET NO. 2018-05

ORDER

NOW, this _____ day of _____, 2019, upon consideration of the Motion to Supplement the Record, filed by Respondent, School District of Pittsburgh, the Motion is GRANTED, and the Record shall be supplemented by the Charter Schools Meeting Multiple Charter School Organization Eligibility Criteria – 24 P.S. § 17-1729.1-A, attached hereto as Exhibit A.

CERTIFICATE OF COMPLIANCE

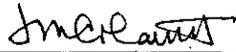
RE: ACCESS TO COURT CASE RECORDS

CAB Docket No.: 2018-05

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Respectfully Submitted,

WEISS BURKARDT KRAMER LLC

Signature: 

Printed Name: Lisa M. Colautti, Esquire

Attorney No. (if applicable): 63280

Phone No.: 412-391-9890

[Pennsylvania Department of Education](#) > [K-12](#) > [Charter Schools](#) > Charter Schools Meeting Multiple Charter School Organization Eligibility Criteria
[Begin Main Content Area](#)

Charter Schools Meeting Multiple Charter School Organization Eligibility Criteria – 24 P.S. § 17-1729.1-A

Charter School Name	2017	2018
Avon Grove CS	Top Quartile	Top Quartile
Baden Academy CS	Top Quartile	Top Quartile
Bucks County Montessori CS	Top Quartile	Top Quartile
Capital Area School for the Arts Charter School	Top Quartile	Top Quartile
Centre Learning Community CS	Top Quartile	Top Quartile
Christopher Columbus CS	Top Quartile	Top Quartile
City CHS	Top Quartile	Top Quartile
Environmental Charter School at Frick Park	Top Quartile	Top Quartile



Evergreen Community CS	Top Quartile	Top Quartile
Fell CS	Top Quartile	Top Quartile
Folk Arts-Cultural Treasures CS	Top Quartile	Top Quartile
Franklin Towne Charter Elementary School	Top Quartile	Top Quartile
Franklin Towne CHS	Top Quartile	Top Quartile
Freire CS	Top Quartile	Top Quartile
Infinity CS	Top Quartile	Top Quartile
Keystone Academy Charter School	Top Quartile	Top Quartile
Lehigh Valley Charter High School for the Arts	Top Quartile	Top Quartile
Lincoln Park Performing Arts CS	Top Quartile	Top Quartile
Mathematics, Science & Technology Community CS	Top Quartile	Top Quartile
Multicultural Academy CS	Top Quartile	Top Quartile
New Foundations CS	Top Quartile	Top Quartile
Philadelphia Performing Arts CS	Top Quartile	Top Quartile
Renaissance Academy Charter School	Top Quartile	Top Quartile
Souderton CS Collaborative	Top Quartile	Top Quartile
Vida Charter School	Top Quartile	Top Quartile
York Academy Regional Charter School	Top Quartile	Top Quartile

Young Scholars of Central PA CS Top Quartile Top Quartile

Eligibility determined as follows:

- Identify top quartile among all brick-and-mortar (including regional) charters that had SPP scores in 2016-17;
- Identify top quartile among all brick-and-mortar (including regional) charters that had SPP scores in 2017-18;
- Identify schools that appear on **both** above lists; and
- Remove any schools that have closed.

CERTIFICATE OF SERVICE

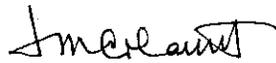
I, Lisa M. Colautti, Esquire do hereby certify that a true and correct copy of the foregoing Motion to Supplement the Record, filed on behalf of Respondent, School District of Pittsburgh, was sent this 16th day of January, 2019, upon the following by Email and First Class Mail:

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Respectfully submitted,

By: 
Lisa M. Colautti, Esquire

WBK

WEISS
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KRAMER LLC

Education & Municipal Law

January 16, 2019

VIA: EMAIL AND FIRST CLASS MAIL:

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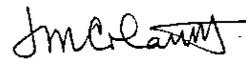
PDE Office of Chief Counsel

**RE: PROPEL CHARTER SCHOOLS v. SCHOOL DISTRICT OF PITTSBURGH
CAB DOCKET NO.: 2018-05**

Dear Ms. Hosler:

Enclosed please an original and one copy of the Respondent, School District of Pittsburgh's, Motion to Supplement the Record, in the above-referenced matter. I also emailed a copy to you. I sent a copy by first class mail and email to Hearing Officer Stoner and Counsel for the Petitioner. Should you have any questions, please do not hesitate to contact my office.

Very truly yours,



Lisa M. Colautti

LMC:mm
Enclosure

cc: Sandra W. Stoner, Esquire, (via: First Class Mail and email, w/encl.)
Alan T. Shuckrow, Esquire/Kathryn L. Clark, Esquire (via: First Class Mail and email, w/encl.)

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

PROPEL CHARTER SCHOOLS,	:	
Appellant	:	Docket No. CAB 2018-05
	:	
v.	:	
	:	Appeal from June 25, 2018 Notice
PITTSBURGH PUBLIC SCHOOLS,	:	of Denial of Application for
Appellee	:	Multiple Charter School
	:	Organization

ORDER

AND NOW, this 22 day of December, 2020, based upon the foregoing and in accordance with the vote of this Board at its meeting on June 18, 2019, it is hereby

ORDERED that Propel Charter Schools' appeal of the Hearing Officer's March 19, 2019 Memorandum Order granting the Pittsburgh Public School's Motion to Supplement the Record is **DENIED**.¹²

It is further **ORDERED** that the appeal of Propel Charter Schools from the denial by the Pittsburgh Public Schools of its Application to operate a Multiple Charter School Organization is hereby **DENIED**.¹³

¹² At its June 18, 2019 meeting, the Charter School Appeal Board voted unanimously to deny Propel Charter School's appeal of the Hearing Officer's Order granting the Motion to Supplement with Board members Yanyanin, Scott, Peri, and Cook voting to deny.

¹³ At its June 18, 2019 meeting, the Charter School Appeal Board voted to deny Propel Charter School's appeal from the denial of its MCSO Application by the Pennsylvania Department of Education with Board members Yanyanin, Scott, and Peri voting to deny and Cook voting to grant. Board Chair Rivera and Vice Chair Munger recused. CAB did not immediately thereafter issue a written decision denying the appeal in accord with Section 17-1729.1-A(f)(iii) of the CSL because a 3 to 1 vote was considered to be nonactionable based upon CAB's interpretation of the voting provision contained Section 17-1721A(a) of the CSL. A November 20, 2020 Commonwealth Court ruling in the matter of Propel Charter Schools v. Commonwealth of Pennsylvania, State Charter Appeal Board, Docket No. 1827 CD 2019, concluded that the 3-1 vote of CAB was proper. CAB now issues its Order in support of its June 18, 2019 vote of 3 – 1 to deny Propel Charter School's appeal.

For the State Charter School Appeal Board



Noe Ortega
Acting Secretary of Education and Chair

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Susan Hosler, Docket Clerk
State Charter Appeal Board, Office of Chief Counsel
Pennsylvania Department of Education
333 Market Street, 9th Floor
Harrisburg, PA 17126-0333

Date Mailed: December 23, 2020