

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

<b>Summit Charter School</b>	:	
<b>Petitioner,</b>	:	
	:	<b>CAB Docket No. 2021-09</b>
v.	:	
	:	
<b>Pocono Mountain School District,</b>	:	
<b>Respondent</b>	:	

**OPINION**

This matter comes before the Pennsylvania State Charter School Appeal Board (“CAB”) on appeal by Summit Charter School (“Summit”) 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.* (“CSL”). Summit appeals from the decision issued February 24, 2021, by the Pocono Mountain School District Board of Directors (“District”) which rejected and denied Summit’s third application (“Third Application”). For the reasons stated below, the decision of the District is affirmed and the appeal is dismissed.

**FINDINGS OF FACT**

**Procedural History**

1. On November 14, 2019, Summit filed its first application (“First Application”) with the District. (Doc. Nos. 001-003<sup>1</sup>).
2. Following public hearings held on December 18, 2019, and February 5, 2020, the District denied the First Application on February 19, 2020. (Doc. Nos. 0013 and 0014).

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<sup>1</sup> Unless otherwise noted, “Doc. No.” refers to the document number designated in the District’s certification of the record.

3. Summit submitted a revised application (“Revised Application”) to the District on July 7, 2020, which was denied by the District on September 9, 2020. (Doc. Nos. 0016-0027).
4. On November 13, 2020, Summit submitted the Third Application, styled as the “Second Full Application” but incorporating by reference the records from the First Application and Revised Application. (Doc. Nos. 0029-0030).
5. The District held public hearings on the Third Application on December 17, 2020, and February 4, 2021. (Doc Nos. 0039-0040).
6. Summit submitted a concluding document on February 13, 2021, that included several attachments. (Doc. No. 0038).
7. On February 24, 2021, the District denied the Third Application and subsequently issued a formal written decision outlining its reasons for denying the Third Application. (Doc. Nos. 0041-0042).
8. This timely administrative appeal followed.
9. In accordance with the briefing schedule issued by an assigned hearing examiner, Summit filed its principal brief on May 4, 2022, the District filed its principal brief on June 3, 2022, and Summit filed a reply brief on July 6, 2022.
10. On July 20, 2022, the District filed a motion seeking leave to either file a sur-reply brief or strike portions of Summit’s reply brief; the District’s proposed sur-reply brief was appended to this motion.
11. On July 29, 2022, Summit filed a response in opposition to the District’s motion.
12. By Order dated November 10, 2022, the hearing examiner granted the District’s motion to file a sur-reply brief, denied the District’s alternate motion to strike portions of

Summit's reply brief, and directed that both the sur-reply brief and Summit's response thereto would be included in the record.

13. On January 10, 2023, the appeal was heard before the CAB at which time counsel for Summit and the District made presentations and responded to questions from members of the CAB.
14. On February 21, 2023, the CAB voted unanimously to deny the instant appeal.

#### **Founding Group and Proposed Governance Structure**

15. The founding group of Summit consists of individuals associated with Summit School of the Poconos ("SSP"), a licensed Private Academic School operating in the East Stroudsburg School District. (Doc. No. 0029, pp. SCS III 000020-21, 000127-30).
16. If the charter were granted to Summit, SSP would dissolve and SSP's board members and staff would transfer to Summit. (*Id.*; Doc No. 0011, pp. 33-34, 48-49).
17. When the Third Application was pending before the District, SSP had fewer than 60 students and was not licensed or approved by the Pennsylvania Department of Education to offer instruction for eleventh or twelfth grade. (Doc No. 0039, p. 58; Doc. No. 0040, pp. 138-39, 159).
18. Summit would be supported by the Summit School Education Foundation ("SSEF"), which would provide fundraising support to Summit and own the school's facility. (Doc. No. 29, p. SCS III 000020).
19. The Third Application does not explain how the lease terms for Summit's proposed facility would be determined. (Certified Record, *passim*).

20. Summit's board of trustees would appoint all the members of SSEF's board and determine how many board members SSEF would have. (Doc. No. 0029, pp. SCS III 002978-79).
21. SSEF would not be able to amend its bylaws without approval from Summit's board of trustees. (Doc. No. 0029, p. SCS III 002989).
22. The officers of SSEF's board would be permitted to draw a salary. (Doc. No. 0029, p. SCS III 002985).
23. There is no restriction that would prevent the same individual from serving on both Summit's board of trustees and SSEF's board, and the Third Application indicates that three individuals would serve on both boards: Katherine Hernandez would serve as the CEO/Principal of Summit, be a non-voting member of Summit's board, and be a member of the SSEF board; John McKissick would serve as the Finance Committee Co-Chair of the Summit Board and a member of the SSEF board; and Jennifer Olson would serve as president of both boards. (Doc. No. 0029, pp. 000019-20, 000126-27; Doc No. 0039, pp. 37-38).

#### **ESSA Foundation Grant**

24. SSP has received a \$750,000 grant from the East Stroudsburg Savings Association Foundation ("ESSA Foundation") to assist with starting the Charter School. (Doc. No. 0039, pp. 53-56).
25. Any leftover funds following the dissolution of SSP would be paid to SSEF. (Doc. No. 0039, p. 56-58).
26. Jennifer Olson (who is the proposed president of both the Summit and SSEF boards) signed the grant application, and her husband is the president and CEO of the ESSA Bank

& Trust and a member of the ESSA Foundation board (though Ms. Olson testified that her husband recused himself from voting on the grant). (Doc No. 0039, p. 66; Doc. No. 0040, p. 103).

27. The Vice President/Treasurer of the ESSA Foundation, Stephanie Lefferson, was listed as a prospective parent of a pre-enrolled student at Summit at the time the grant was awarded, and Ms. Lefferson was subsequently asked to join the SSEF board. (Doc. No. 0016, p. 2261; Doc. No. 0029, p. SCS III 000021; Doc. No. 0040, pp. 108-10).

### **Curriculum and Educational Program**

28. Summit aims to provide “a movement-rich, project-based environment, grounded in shared governance, where students demonstrate an active voice and ownership in their education.” (Doc. No. 0029, p. SCS III 000025).

29. Summit seeks to open as a school serving kindergarten through eleventh grade with a total of 360 students in its first year, expand in its second year to serving 460 students in kindergarten through twelfth grade, serve 860 students by the fifth year of operation, and serve 1,300 students by the tenth year of operation. (Doc. No. 0029, pp. SCS III 000017-000018).

30. The Third Application includes more than 2,700 pages of curriculum materials. (Doc. No. 0029).

31. In its adjudication, the District found that Summit failed to align its curriculum to state standards, failed to demonstrate planned instruction for numerous grade levels and subject areas, and failed to differentiate the curriculum of students of varying grade levels. (Doc. No. 0042, pp. 11-19).

32. The Third Application also sets forth numerous measurable goals and objectives. (Doc. No. 0029, pp. SCS III 000025-42).

### **English Learners**

33. Summit plans to address the needs of English learners by hiring a single, full-time ESL teacher who would be responsible for implementing all components of the Language Instruction Educational Program (“LIEP”). (Doc. No. 0029, p. SCS III 000058).

34. The District determined that the Third Application included, without attribution, the District’s ESL Handbook and related forms, failing to address how Summit would incorporate English learners into Summit’s unique curriculum. (Doc. No. 0042, p. 23). This portion of the Third Application was not included by the District in the Certified Record.<sup>2</sup>

### **Admissions and Enrollment**

35. The Third Application indicates that students would be required to submit certain paperwork as a prerequisite for enrollment, including but not limited to a “family information sheet,” field-trip permission form, emergency-contact form, a “[p]hoto and video authorization or denial form,” an executed acknowledgement of receipt of the student and families handbook, and a student transportation plan. (Doc. No. 0029, pp. SCS III 000170, 0002938).

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<sup>2</sup> According to the Third Application’s table of contents, the materials pertaining to English learners are in Appendix A.III. The District’s adjudication specifically cites the ELS Handbooks as being at Page SCS III 003484. The Certified Record includes part of Appendix A.III in Doc. No. 0030, but only up to Page SCS III 003428.

36. The Third Application indicates that a home-language survey is also required for admission, while the student handbook appended to the Third Application contains no such requirement. (*Id.*).

37. The Student Handbook also indicates that enrollment preference will be given to the grandchildren of the founders and board members. (Doc. No. 0029, p. SCS III 002938).

### **Insurance Coverage and Retirement Benefits**

38. The Third Application indicates that, “[t]o the best of [Summit’s] ability, given the constraints of the health insurance marketplace, every employee of a charter school shall be provided with the same health care (*sic*) benefits...as the employee would be provided if he or she were an employee of the district.” (Doc. No. 0029, p. 000157).

39. Summit does not plan to participate in the Public School Employees’ Retirement System (“PSERS”), but does not have an existing retirement program for its employees. (Doc. No. 0029, p. 000179; Doc No. 0040, pp. 139-40).

### **Due Process**

40. The parties have received notice and the opportunity to respond to all documents and proceedings since the filing of the administrative appeal.

### **CONCLUSIONS OF LAW**

1. The CAB has jurisdiction over the instant appeal. Findings of Fact Nos. 1-14; 24 P.S. §§ 17-1717-A(f), 17-1721-A, and 17-1746-A(a)(1).
2. The CAB has the authority under the CSL to agree or disagree with the findings of the District based upon the CAB’s review of the certified record. 24 P.S. § 17-1717-A(i)(6).
3. The CAB is statutorily required to conduct its review “on the record as certified by the local board of directors.” 24 P.S. § 17-1717-A(i)(6).

4. The CSL mandates that “[a] charter school Application submitted under the [CSL] shall be evaluated by the local board of school directors based on criteria, including, but not limited to,” the following:
  1. The demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the public hearing...;
  2. The capability of the charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the adopted charter;
  3. The extent to which the application considers the information requested in §1719- A and conforms to the legislative intent outlined in §1702-A; and,
  4. The extent to which the charter school may serve as a model for other public schools.

24 P.S. §17-1717-A(e)(2).

5. Summit has not demonstrated the capability to provide comprehensive learning experiences to its students. Findings of Fact Nos. 28-39.
6. The Third Application addresses the requisite considerations under Section 1719-A of the CSL, but its admissions policy, plans for insurance coverage, and plans for employee healthcare benefits are not in conformity with the requirements of the CSL. Findings of Fact Nos. 35-39.
7. The Third Application does not satisfy the legislative intent of the CSL because Summit would not improve pupil learning or increase learning opportunities. Findings of Fact Nos. 28-39.
8. Summit would not serve as a model for other public schools. Findings of Fact Nos. 28-39.

9. The parties were provided an opportunity to be heard regarding this process. (Record, *passim*).

## DISCUSSION

### **I. STANDARD OF REVIEW**

In reviewing a decision to deny a charter application, the CAB applies a *de novo* standard of review. *West Chester Area Sch. Dist. v. Collegium Charter Sch.*, 812 A.2d 452 (Pa. 2002).

Further, the CSL provides:

In any appeal, the decision made by the local board of directors shall be reviewed by the appeal board on the record as certified by the local board of directors. The appeal shall give due consideration to the findings of the local board of directors and specifically articulate its reasons for agreeing or disagreeing with those findings in its written decision.

24 P.S. §17-1717-A(i)(6). As such, the CAB is empowered to “determine the weight of the evidence behind each finding and draw its own conclusions.” *In re Hills Acad. Charter Sch.*, (No. CAB 1999-12).

The General Assembly enacted the CSL to foster the following goals:

1. Improve pupil learning.
2. Increase learning opportunities for all pupils.
3. Encourage the use of different and innovative teaching methods.
4. Create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site.
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 and provide the school with a method to establish accountability systems.

24 P.S. § 17-1702-A.

The CSL mandates that “[a] charter school Application submitted under the [CSL] shall be evaluated by the local board of school directors based on criteria, including, but not limited to,” the following:

1. The demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the public hearing...;
2. The capability of the charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the adopted charter;
3. The extent to which the application considers the information requested in §1719-A and conforms to the legislative intent outlined in §1702-A; and,
4. The extent to which the charter school may serve as a model for other public schools.

24 P.S. §17-1717-A(e)(2). Further, the CSL requires that charter school applications address the following issues:

1. The identification of the charter applicant.
2. The name of the proposed charter school.
3. The grade or age levels served by the school.
4. The proposed governance structure of the charter school, including a description and method for the appointment or election of members of the board of trustees.
5. The mission and education goals of the charter school, the curriculum to be offered and the methods of assessing whether students are meeting educational goals.

6. The admission policy and criteria for evaluating the admission of students which shall comply with the requirements of §1723-A.
7. Procedures which will be used regarding the suspension or expulsion of pupils. Said procedures shall comply with §1318.
8. Information on the manner in which community groups will be involved in the charter school planning process.
9. The financial plan for the charter school and the provisions which will be made for auditing the school under §437 of the CSL.
10. Procedures which shall be established to review complaints of parents regarding the operation of the charter school.
11. A description of and address of the physical facility in which the charter school will be located and the ownership thereof and any lease arrangements.
12. Information on the proposed school calendar for the charter school, including the length of the school day and school year consistent with the provisions of §1502.
13. The proposed faculty and a professional development plan for the faculty of a charter school.
14. Whether any agreements have been entered into or plans developed with the local school district regarding participation of the charter school students in extracurricular activities within the school district. Notwithstanding any provision to the contrary, no school district of residence shall prohibit a student of a charter school from participating in any extracurricular activity of that school district of residence: Provided, That the student is able to fulfill all of the requirements of participation in such activity and the charter school does not provide the same extracurricular activity.
15. A report of criminal history record, pursuant to §111, for all individuals who shall have direct contact with students.
16. An official clearance statement regarding child injury or abuse from the Department of Public Welfare as required by 23 Pa. C.S. Ch. 63 Subch. C.2 (relating to background checks for employment in schools) for all individuals who shall have direct contact with students.
17. How the charter school will provide adequate liability and other appropriate insurance for the charter school, its employees and the board

of trustees of the charter school.

24 P.S. §17-1719-A.

## **II. BURDEN OF PROOF**

The degree of proof required to establish a case before an administrative tribunal in an action of this nature is preponderance of the evidence. *Kirkpatrick v. Bur. of Professional and Occupations Affairs, State Bd. of Barber Examiners*, 117 A.3d 1286, 1288 n.7 (Pa. Cmwlth. 2015). Preponderance of the evidence is the least rigorous evidentiary standard. *Helwig v. Com., Dep't. of Trans., Bur. of Driver Licensing*, 99 A.3d 153, 158 (Pa. Cmwlth. 2014). “A preponderance of the evidence is ‘such proof as leads the fact-finder...to find that the existence of a contested fact is more probable than its nonexistence.’” *Dep't. of Trans. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Cmwlth. 2010) (quoting *Sigafoos v. Pa. Bd. of Probation and Parole*, 503 A.2d 1076, 1079 (Pa. Cmwlth. 1986)). In other words, it is a “‘more likely than not’ standard.” *Commonwealth v. \$6,425.00 Seized From Esquilin*, 880 A.2d 523, 552 (Pa. 2005). Accordingly, the record in this matter is reviewed to determine if the evidence that Summit produced at the district level meets its burden of proving that the Third Application satisfies the requirements enumerated in the CSL at 24 P.S. § 17-1717-A(e)(2), warranting the grant of a charter.

## **III. MERITS**

### **A. Section 1717-A(e)(2)(ii) – Capability for comprehensive learning experiences**

The CSL requires an application to demonstrate “[t]he capability of the charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the adopted charter.” 24 P.S. § 17-1717-A(e)(2)(ii). “In order to provide a comprehensive learning experience to students, a charter applicant must demonstrate adequate support and planning in the charter application.” *Duquesne Charter Sch.*, No. CAB 2013-01.

An applicant is obligated to provide at least “a roadmap to the school’s operation, goals, teaching strategies and learning methodology,” but may not rely upon mere “general pronouncements.” *Bensalem Keystone Acad. Charter Sch.*, No. CAB 2012-14. To pass muster, a curriculum must be meet and be aligned with the state standards. *Spartansburg Cmty. Charter Sch.*, No. CAB 2016-02. An applicant must also explain how “the nontraditional elements of the [c]harter [s]chool will be integrated into the curriculum.” *Cmty. Serv. Leadership Dev. Charter Sch.*, No. CAB 2010-02.

The District found that Summit failed to put forth a sufficiently developed curriculum, specifically faulting Summit for failing to align its curriculum to state standards, failing to demonstrate planned instruction for various grade levels and subject areas, and failing to differentiate the curriculum for students of varying ability levels. Summit has not specifically rebutted these findings, offering only general contentions that it submitted a large volume of curricular materials, that these materials generally demonstrate Summit’s ability to provide comprehensive learning experiences, and that the CSL does not mandate the level of detail sought by the District. Summit further contends that the District’s criticisms are rooted in the District’s alleged ignorance regarding Summit’s competency-based model, which differs from the District’s time-based model.

The District’s findings highlight serious deficiencies in Summit’s curricular materials. Despite bearing the burden of proof and having these deficiencies pointed out by the District during multiple phases of the application process, Summit has declined to present any specific rebuttal, relying instead on generalities.

The District also found that Summit has not articulated a plan for credit recovery or remediation for middle- and high-school students who are under-credited when they transfer into

Summit or fall behind once enrolled. Summit offers no response to this noted deficiency.

The District further found that Summit did not have an adequate plan for educating English learners (“EL students”). The Third Application indicates that Summit plans to hire one full-time ESL teacher, and that this one teacher will be responsible for implementing the LIEP and work with all EL students. The District argues that this does not constitute sufficient planning for educating EL students.<sup>3</sup>

It is not clear how a single teacher will provide for the needs of all EL students in a school with a projected first-year population of 360 students spread between kindergarten and eleventh grade. Summit’s pledge that this lone staff member will develop and implement an appropriate plan does not demonstrate adequate planning for the education of EL students. This is especially so where Summit proposes to offer a variety of nontraditional programs. Failing to plan for how to integrate EL students into a charter school’s unique programs deprives such students of comprehensive learning experiences. *Vision Acad. Charter Sch. of Innovation*, No. CAB 2021-07.

For these reasons, Summit has not demonstrated the capability to provide comprehensive learning experiences.

**C. Section 1717-A(e)(2)(iii) – Factors under Section 1719-A and legislative intent**

As delineated above, Section 1717-A of the CSL references a list of factors in Section 1719-A that must be addressed in the application. 24 P.S. §§ 17-1717-A(e)(2)(iii) and 17-1719-A. The District, in its Decision, found the application to be deficient regarding the information required by 24 P.S. § 17-1719-A(4) (proposed governance structure), (5)

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<sup>3</sup> The District also contends that Summit has plagiarized the District’s own ESL handbook and associated forms without attribution and included it in the Third Application. However, the District has failed to include this portion of the Third Application in the certified record, and so comprehensive review of this issue is precluded.

(description of the mission and goals of the charter school), (6) (admission policy), (9) (reliable financial plan), (13) (professional development plan), and (17) (appropriate insurance for employees).

With respect to Section 1719-A(4), the District faults Summit's proposed governance structure for multiple reasons. The Third Application revealed that Summit would be supported by the SSEF, which would provide fundraising support to Summit and also own the school's facility. The District avers that the intersection of SSEF and Summit's board of trustees leaves the door open to corruption. The District alleges that Summit's board of trustees will dominate SSEF, in that Summit's board of trustees is responsible for appointing all of the members of SSEF's board and SSEF cannot amend its bylaws without approval from Summit's board of trustees. There is no restriction to prevent members of Summit's board of trustees from simultaneously serving on the SSEF board. Indeed, Summit has identified three individuals who would serve on both boards. Officers of the SSEF board are permitted to draw a salary. And while SSEF will own the real estate and will lease it to Summit, there is nothing in the application materials explaining how the lease rate will be determined.

Summit responds that the Summit and SSEF boards would only have two members in common and alleges that this is in keeping with best practices for a nonprofit. Summit urges that SSEF will only be a pass-through entity and will not make a profit. Summit avers that it has retained competent nonprofit counsel and has put forth a conflict-of-interest policy that is adequate. Summit claims that notwithstanding anything that SSEF may do, Summit will be fully in charge of its own operations.

The District rejoins (accurately) that Summit has explicitly stated that there will be at least three people who serve on both the Summit and SSEF boards and there is nothing in the

record evincing that cross-membership on both boards will be limited. The District rejects Summit's arguments about nonprofit "best practices," noting that there is nothing in the record delineating what best practices are. The District further argues that cross-membership on both the Summit and SSEF boards violates Summit's conflict-of-interest policy, since a board member cannot have simultaneous, total fiduciary loyalty to both entities. Fundamentally, the District argues that there cannot ever be an arm's-length transaction between Summit and SSEF where SSEF is so thoroughly dominated by Summit.

Additionally, SSP received a \$750,000 grant from the East Stroudsburg Savings Association Foundation ("ESSA Foundation") to assist with starting the charter school. Any leftover funds following the dissolution of SSP would be paid to SSEF. Jennifer Olson (who is the proposed president of both the Summit and SSEF boards) signed the grant application, and her husband is the president and CEO of the ESSA Bank & Trust and a member of the ESSA Foundation board (though Ms. Olson testified that her husband recused himself from voting on the grant). The Vice President/Treasurer of the ESSA Foundation, Stephanie Lefferson, was listed as a prospective parent of a pre-enrolled student at Summit at the time the grant was awarded, and Ms. Lefferson was subsequently asked to join the SSEF board. Overall, the District is concerned about the absence of details and conditions attached to this grant and the interwoven personal connections between Summit, SSEF, and the ESSA Foundation.

The District emphatically argues that the entanglement between Summit, SSEF, and the ESSA Foundation is ethically improper. However, the District does not cite to any provision of the CSL, the Ethics Act, or any caselaw that would *per se* prohibit such entanglement. Under CAB precedent, it is permissible to have individuals serve on both the charter board and the board of the support entity that owns the real estate so long as actual self-enrichment/private

pecuniary benefits do not actually occur. *I-LEAD Charter School*, No. CAB 2016-05. However, the lack of procedural safeguards would certainly make it much easier for an unscrupulous board member to enrich themselves or commit malfeasance within this structure.

Even if SSEF were not a nonprofit, a charter school is permitted to contract with a for-profit entity “so long as the school itself is not for-profit, the charter school’s trustees have real and substantial authority and responsibility for the educational decisions, and the teachers are employees of the charter school itself.” *Insight PA Cyber Charter Sch. v. Dep’t. of Ed.*, 162 A.3d 591, 595 (Pa. Cmwlth. 2017) (*en banc*), quoting *West Chester Area Sch. Dist. v. Collegium Charter Sch.*, 760 A.2d 452, 468 (Pa. Cmwlth. 2000) (emphasis omitted). The District’s concern is not that SSEF will dominate the Summit board, but that the Summit board will dominate SSEF. This arrangement in and of itself does not run afoul of the letter or spirit of the CSL. It is not a foregone conclusion that the members of Summit will use SSEF to reap private pecuniary gain from the charter, but a bad actor could theoretically take advantage of this structure to enrich themselves. This governance structure, standing by itself, would not warrant denial of the charter, though it is certainly not reflective of the ideal or optimal practices.

With respect to Section 1719-A(5), in addition to the deficiencies with Summit’s proposed curriculum discussed above, the District also faulted Summit for failing to set forth adequately detailed, measurable goals. Summit cites to the Third Application as setting forth appropriate methods of assessing whether students are meeting educational goals. We agree that Summit has set forth an adequate description of how it will assess the achievement of educational goals, but that is moot considering the curricular deficiencies discussed above.

With respect to Section 1719-A(6), the District found that the Third Application contained inconsistent statements about enrollment, in that Summit’s student handbook and its

admission policy contain conflicting information about whether a home-language survey is required prerequisite to admission. The District also criticizes Summit for its plan to give enrollment preference to the grandchildren of founding individuals in violation of Section 17-1723-A(a) of the CSL. The District further alleges that Summit has unlawfully premised admission on the submission of documents and forms—including a “family information sheet,” field-trip permission form, emergency-contact form, a “[p]hoto and video authorization or denial form,” an executed acknowledgement of receipt of the student and families handbook, and a student transportation plan—that are additional to the paperwork required under the Public School Code and the Department of Education’s regulations. *See* 24 P.S. §§ 13-1302, 13-1303a, 13-1304A(a); 22 Pa. Code § 11.11(e). Summit concedes in its reply brief that it needs to update its student handbook to bring it into compliance with the CSL. *See* Summit Reply Brief, p. 27. The District’s concerns in this regard are valid. The Third Application seeks to impose restrictions on admission and give preference for admission beyond what is permissible under the law.

With respect to Sections 1719-A(9) and (17), the District contends that the financial plans outlined in Summit’s application lack provisions pertaining to COVID-19 contingencies, substitute teachers, and paraprofessionals. The District also faults the application for its lack of details regarding how many teachers will be needed at each grade level, the funding of the proposed alternate retirement plan, the funding of health-insurance benefits for employees, and the provision of liability insurance. Regarding COVID-19, the District notes that Summit has not submitted any health and safety plan and does not appear to have budgeted for potential expenditures related to protective equipment, increased cleaning costs, or technological or programmatic needs associated with virtual learning. Summit’s position is that its budget plan

only needs to be detailed enough to allow for a determination of whether it is capable of providing a comprehensive learning experience for students. Regarding planning for COVID contingencies, Summit responds that they are not required to submit detailed plans under the CSL, and that they are ready to deal with COVID because they have been operating SSP throughout the pandemic.

“Perceived deficiencies in particular budget line items are not grounds for denying a charter”—indeed, the application’s financial plan does not even need to contain a line-item budget. *Insight PA Cyber Charter Sch.*, 162 A.3d at 611 (*en banc*). All that is required is sufficient information “to show that [an applicant] has considered the budgeting issues and that based on reasonable assumptions, it will have the necessary funds to operate the school it proposes” and “provid[e] a comprehensive learning experience for students.” *Id.* (emphasis omitted). With the exception of its planning for insurance and retirement benefits discussed below, we do not find that Summit’s budgetary materials are inadequate under this standard.

The District also claims that Summit’s plans for employee retirement are inadequate. The CSL requires participation in PSERS unless “at the time of the application for the charter school the sponsoring district or the board of trustees of the charter school has a retirement program which covers the employees...” 24 P.S. § 17-1724A(c). The District contends that Summit has failed to provide any details about its retirement program and has not created a budget contingency for participating in PSERS. Summit also indicates that it will provide health-insurance benefits equal to those provided by the District only “to the best of [its] ability...”

Regarding health insurance and the retirement plan, Summit avers that it does not need to provide exhaustive details, but instead offers assurances that it is aware of its obligations and will

find a way to meet them. Summit says that it has engaged with a private company to serve as a business manager, and that this company will be able to secure an appropriate retirement plan.

However, pledging to provide equal health benefits to the best of one's ability is not consistent with the statutory mandate. See 24 P.S. § 17-1724-A(d). We agree with the District that Summit's conditional pledge of equal health-insurance benefits is inadequate under the CSL. Further, the CSL expressly requires an applicant to either have an existing retirement plan or to participate in PSERS. 24 P.S. § 17-1724-A(c). Summit's plans for employee health insurance and retirement are not in conformity with the requirements of the CSL.

With respect to Section 1719-A(13), the District was concerned that Summit does not presently have an ownership interest in its proposed facility and would be leasing it at unspecified terms from SSEF. We do not find that this issue, standing alone, would warrant denial of a charter. The District also characterizes Summit's professional-development planning as inadequate due to the absence of certain details and logistics related to the administration of such training. A charter application is not required to contain the level of detail sought by the District, and therefore this concern, standing alone, is not a basis for denying the charter. See *Phoenix Acad. Charter Sch.*, No. CAB 1999-10.

Section 1717-A(e)(2)(iii) also requires a charter application to conform to the legislative intent of the General Assembly as expressed in Section 1702-A of the CSL, including the goals of improving learning for students and increasing learning opportunities. 24 P.S. §§ 17-1702-A, 17-1717-A(e)(2)(iii). Based on the deficiencies outlined above, Summit falls short of achieving the legislative intent of the CSL.

**D. Section 1717-A(e)(2)(iv) – Model for other public schools**

Section 1717-A(e)(2)(iv) requires consideration of whether the proposed charter school

would “serve as a model for other public schools.” 24 P.S. § 17-1717-A(e)(2)(iv). A charter school is required to “expand the curricular choices available to students and encourage innovative and different teaching methods.” *Bensalem Keystone Acad. Charter Sch.*, No. 2012-14 (quoting *City College Prep Charter Sch.*, No. CAB 2006-1). Because of the above-noted deficiencies with Summit’s curriculum planning, its admissions policy, and its inadequate provisions for employee health insurance and retirement benefits, Summit is incapable of serving as a model for other public schools.

#### **IV. CONCLUSION**

For all of the reasons stated above giving due consideration to the findings of the District, the evidentiary record, and the requirements of the CSL, the following order shall enter:

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

<b>Summit Charter School</b>	:	
<b>Petitioner,</b>	:	
	:	<b>CAB Docket No. 2021-09</b>
<b>v.</b>	:	
	:	
<b>Pocono Mountain School District,</b>	:	
<b>Respondent</b>	:	

**ORDER**

**AND NOW**, this 22<sup>nd</sup> day of April, 2023, based upon the foregoing and the unanimous vote of this Board,<sup>4</sup> the February 4, 2021, decision of the Pocono Mountain School District to deny a charter is **AFFIRMED**.

For the State Charter School Appeal Board,



\_\_\_\_\_  
Chair

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<sup>4</sup> At the CAB’s meeting on February 21, 2023, the decision was affirmed by unanimous vote, with Members Marten, Schwartz, and Faustman voting to deny the appeal and Member Mumin abstaining.

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**Agency:**

Charter School Appeal Board  
Pennsylvania Department of Education  
333 Market Street, 9<sup>th</sup> Floor  
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**Date of mailing:**

4/24/2023