

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

| | | |
|----------------------------------------|---|-------------------------------|
| Career Tech Charter High School | : | |
| Petitioner, | : | |
| | : | CAB Docket No. 2021-01 |
| v. | : | |
| | : | |
| School District of Pittsburgh, | : | |
| Respondent | : | |

OPINION

In accordance with the Charter School Law¹ (“CSL”), this matter comes before the Pennsylvania State Charter School Appeal Board (“CAB”) on the appeal by Career Tech Charter High School (“Career Tech”) from the denial of a grant of its charter by the Pittsburgh Board of Education for the School District of Pittsburgh (“School District”).

BACKGROUND AND PROCEDURAL HISTORY

On November 15, 2017, Career Tech filed a charter application with the School District. A public hearing was held on February 5, 2018, and on February 21, 2018 the Pittsburgh Board of Education voted to deny the application. A written decision was issued on February 28, 2018.

On November 13, 2018, the Charter School resubmitted to the Pittsburgh Board of Education a revised application to establish a charter school within the School District. Following public hearings on January 8, 2019, and on January 30, 2019 the Pittsburgh Board of Education voted to deny the revised application. It issued its written decision on February 4, 2019.

On February 24, 2021 Career Tech filed an appeal with CAB and on April 21, 2021 the School District filed an answer to the appeal. The assigned hearing examiner issued an order

¹ Act of June 19, 1997 (P.L. 225, No. 22), *as amended*, 24 P.S. §§ 17-1701-A – 17-1751-A.

requiring any motion to supplement the record to filed by July 16, 2021. No motions to supplement were filed.

On July 19, 2021, a briefing schedule was established, and the parties simultaneously filed timely principal briefs on August 19, 2021 and response briefs on September 3, 2021. On September 20, 2021 the hearing examiner certified the record and briefs to CAB.²

The matter was scheduled for oral argument before CAB in October 2021, but the parties agreed to continue the matter until December 2021. It was ultimately argued on December 7, 2021. On January 11, 2022 CAB voted unanimously to deny the appeal. This opinion is filed in support of that decision.

² The Certified Record filed with CAB was amended on August 30, 2021. As explained by Counsel for the School District: "It has come to my attention that there was an inadvertent mistake in the certified record filed by the district. The Certified Record included Individual Review Scoring Sheets on pages 1040a-1052a. The uploaded document included the scoring sheets for the original application instead of the scoring sheets for the revised and resubmitted application. I am attaching the correct scoring sheets to this email and will file a correctly paginated certified record with the correct documents as soon as possible." There was no opposition to this correction.

FINDINGS OF FACT

1. On November 15, 2017 Career Tech filed a charter application with the School District. Case file.
2. On February 21, 2018 the Pittsburgh Board of Education voted to deny the application. CR 1587a.
3. On November 13, 2018, the Charter School submitted a revised application to the Pittsburgh Board of Education. CR 1-940a.
4. In its revised application it identified a proposed charter school that would be an independent open enrollment public high school focusing on STEM-related career professionals. CR 11a-15a, 31a.
5. Charter Tech proposes to employ a “whole person” approach and intends to utilize a project-based learning method. CR 11a-15a, 31a.
6. On January 30, 2019 the Pittsburgh Board of Education voted to deny the revised application. CR 1064a.
7. On February 4, 2019, the Pittsburgh Board of Education issued its written decision. CR 1064a- 1067a.
8. The grounds for the denial of revised application were that Career Tech was still deficient in the following areas: A.) evidence of sustainable support, B.) the capability, in terms of support and planning, to provide comprehensive learning experiences to students; C.) failure to consider all the information requested in Section 1719-A and conform to the legislative intent outlined in Section 1702-A; D.) failure to provide expanded choices in the types of educational opportunities that are offered in the School District; E.) failure to describe a complete and comprehensive curriculum that aligns with state standards; F.)

failure to provide a continuum of services to meet the needs of all students; G.) failure to demonstrate that it can serve as a model for other schools in the District; H.) failure to include a governance structure that complies with local, state and federal laws; and, I.) deficiency in financial viability. CR. 1064a-1066a.

9. On February 24, 2021 Career Tech filed an appeal with CAB. Case file.

10. On April 21, 2021 the School District filed an answer to the appeal. Case file.

11. On July 19, 2021, a briefing schedule was established, and the parties simultaneously filed timely principal briefs on August 19, 2021 and reply briefs on September 3, 2021. Case file.

12. On September 20, 2021 the record and briefs were certified to CAB. Case file.

13. The matter was argued before CAB on December 7, 2021.

14. On January 11, 2022 CAB voted unanimously to deny the appeal.

15. Of the thirty letters of support in the revised application, seven were not current (they were dated from 2017 and the original application); two were duplicates; three were undated; and three were proposed agreements and not letters of support. CR. 1069a.

16. The revised application included petitions with signatures purporting to demonstrate support from the community. *Id.*

17. Of the ninety-six signatures included, eighty-six were undated, so the School District could not determine when they were collected and deemed them invalid evidence of support. *Id.*

18. Of the remaining ten signatures, four were from residents of the School District and six were from non-School District residents. *Id.*

19. The revised application did not include any pre-enrollment forms from students or families demonstrating interest in enrolling in the Charter School, should it be granted a charter. *Id.*
20. The revised application consisted only of vague outlines and hypotheticals examples of student work. CR 1035a.
21. Because the model in the revised application is dependent entirely on individual project-based learning, there is no way to assess how any students will meet state standards. CR 1035a.
22. The revised application indicated that the STAR Assessment will be used to determine mastery of, *inter alia*, science and history, but that assessment does not measure those subjects. CR 1034a.
23. The revised application included only generalized areas of learning such as engineering, robotics, architecture and welding, but there is little to no information included in the submitted curriculum materials or scope and sequence that supports the program. CR 1033a.
24. The revised application contained no curriculum at all for twelfth grade. CR 1035a.
25. The revised application contained no academic accountability for Mondays, which are merely designated for “family or screen time.” CR 1036a.
26. The revised application failed to provide a continuum of services to meet the needs of all students, indicating only that students with exceptionalities or who are in need of additional support will be referred to a neighboring intermediate unit. CR. 1036a.

27. The revised application does not demonstrate an understanding that Career Tech would be the home district and the Local Education Agency (“LEA”) for all of its students. CR 1049a.
28. The revised application has no plan for providing Life Skills Instruction. CR 1055a.
29. The revised application duplicates fifteen Career and Technical Education (CTE) programs out of twenty-two already offered by the School District’s CTE program. CR 1537a-1538a.
30. Under Career Tech’s Bylaws provided with the revised application, the Chief Administrative Officer (“CAO”) and other employees would hold seats on the Board of Trustees, creating apparent conflicts of interest. CR 1050a, 1059-1060a.
31. Under Career Tech’s Bylaws there is an inconsistency as to how often the Board of Trustees will meet. CR 1051.
32. Under Career Tech’s Bylaws the CAO, *an employee*, can nominate a replacement for a Board of Trustees vacancy. CR 1051a.
33. The proposed budget in the revised application is deficient with regard to financial viability because it lacks specificity; it is missing, among other items, the number of employees needed. CR 1048a.
34. The revised application references a grant that would be obtained for startup costs without any further detail. CR 1048a, 1066a.
35. There are other schools in the School District that have already implemented comprehensive cross-curricular project-based learning. CR 1032a. 1057a.
36. There is no peer-related research to support the whole person model. CR 1045-1046.

CONCLUSIONS OF LAW

1. CAB has jurisdiction in this matter. Section 1717-A(f) and (i)(1) of the CSL, 24 P.S. § 17-1717-A(f) and (i)(1).
2. The CSL governs the application process, the approval process, the revocation and renewal of charters, and the operation of charter schools in Pennsylvania. 24 P.S. §§ 17-1701-A – 17-1751- A.
3. Career Tech was given notice and an opportunity to be heard in conformity with the CSL and notions of due process. Case file.
4. CAB has the authority under the CSL to agree or disagree with the findings of the School District Board based upon its review of the certified record. 24 P.S. § 17-1717-A(i)(6).
5. Career Tech did not meet its burden to show evidence of sustainable support.
6. Career Tech did not meet its burden to show capability, in terms of support and planning, to provide comprehensive learning experiences to students.
7. Career Tech did not meet its burden to show that its application and revised application considered all the information requested in Section 1719-A of the CSL and conformed to the legislative intent outlined in Section 1702-A of the CSL.
8. Career Tech did not meet its burden to show that it would provide expanded choices in the types of educational opportunities that are offered in the School District.
9. Career Tech did not meet its burden to describe a complete and comprehensive curriculum that aligns with state standards.
10. Career Tech did not meet its burden to show a continuum of services to meet the needs of all students.

11. Career Tech did not meet its burden to show a governance structure that complies with local, state and federal laws.
12. Career Tech did not meet its burden to show financial viability.
13. This issue of whether Career Tech would be unable to serve as a model for other schools in the School District is waived.

DISCUSSION

STANDARD OF REVIEW/BURDEN OF PROOF

CAB must apply a *de novo* standard of review when entertaining appeals from a district's denial of a charter school's application; such review requires CAB to give "appropriate consideration" to the findings of the district board, while making an independent determination as to the merits of the charter application. *West Chester Area Sch. Dist. v. Collegium Charter Sch.*, 812 A.2d 1172, 1180 (Pa. 2002). While giving due consideration to the vote of the school board, CAB must independently review the record in accordance with the requirements of the CSL. *Id.*, 812 A.2d at 1179-1180.

The degree of proof required to establish a case before an administrative tribunal preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). A preponderance of the evidence is the lowest degree of proof recognized in civil judicial proceedings, *Lansberry, supra*, 578 A.2d at 602, citing *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950), and is generally understood to mean that the evidence demonstrates a fact is more likely to be true than not to be true, or if the burden were viewed as a balance scale, the evidence in support of the proponent's case must weigh slightly more than the opposing evidence. *Se-Ling Hosiery*, 70 A.2d at 856. Accordingly, the record in this matter is reviewed to determine if the evidence which the Charter School produced at the hearings meets the Charter School's burden of proving that its revised application satisfies all the requirements enumerated in the CSL at Section 1717-A(e)(2), 24 P.S. § 17-1717-A(e)(2), thus, warranting the grant of the revised application.

GROUNDINGS FOR DENIAL OF AN APPLICATION

A charter school application must be evaluated based on criteria including, but not limited

to:

- (i) The demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the public hearing under [section 1717-A(d) of the CSL].
- (ii) 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.
- (iii) The extent to which the application considers the information requested in section 1719-A and conforms to the legislative intent outlined in section 1702-A.
- (iv) The extent to which the charter school may serve as a model for other public schools.

Section 1717-A(e)(2) of the CSL, 24 P.S. § 17-1717-A(e)(2). Further, Section 1719-A of the CSL requires that charter school applications address the following issues:

- 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.
- ...
- 9. The financial plan for the charter school and the provisions which will be made for auditing the school under §437 of the CSL.
- ...
- 13. The proposed faculty and a professional development plan for the faculty of a charter school.

24 P.S. §17-1719-A. Finally, Section 1702-A of the CSL, 24 P.S. § 17-1702-A, sets forth the intent of the General Assembly in enacting the CSL, explaining that it is

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.
- (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.

In its adjudication the Pittsburgh Board of Education opined that the revised application was deficient in the following ways:

- Evidence of sustainable support
- Evidence of capability to provide comprehensive learning experiences to students
- Failure to provide sufficient information as required in an application and to conform to legislative intent
- Failure to adequately provide expanded choices in the types of educational opportunities that are offered by the School District
- Failure to describe a complete and comprehensive curriculum that aligns with state standards
- Failure to provide a continuum of services to meet the needs of all students
- Failure to demonstrate that it can serve as a model for other schools in the School District
- Lack of inclusion a governance structure that complies with local, state and federal laws

- Failure to show financial viability

CR 1064a-1066a.

MERITS

I. The revised application does not include evidence of sustainable support.

Section 1717-A(e)(2)(i) provides that an application is to be evaluated based on the “demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the public hearing” 24 P.S. § 17-1717-A(e)(2)(i). “Sustainable support” has been defined by CAB as “support sufficient to sustain and maintain a charter school as an ongoing entity.” *Catalyst Academy Charter School v. School District of Pittsburgh*, slip op. at 15 (Pa. Charter Sch. Appeal Bd., no. 2018-03, filed July 15, 2019). It “has described the required demonstrated sustainable support as an ‘inherent variable’ depending on the size of the proposed school, the community and other factors.” *Id.* Sustainable support may be measured in the aggregate and not individual categories, and failure to demonstrate strong support in any one category is not necessarily fatal to a charter school application. *McKeesport Area School District v. Propel Charter School McKeesport*, 888 A.2d 912, 916 (Pa. Cmwlth. 2005). To demonstrate sustainable support the applicant must show that it has reasonably sufficient support from all aggregate groups. *Montour School District v. Propel Charter School-Montour*, 889 A.2d 682, 687 (Pa. Cmwlth. 2006). The support must be for the actual plan and from the community in which it is proposed to be located. *In Re Helen Murry Charter School for the Arts*, CAB 2005-5, p. 10.

Here, the record shows that of the thirty letters of support Career Tech submitted, seven are not current (dated 2017), two are duplicates, three are undated and three are proposed agreements, not letters of support. Regarding petitions with signatures supplied, of the ninety-six submitted, eighty-six of were undated, and of the remaining ten, six were persons not residing in the School District. Also lacking were pre-enrollment forms from which an interest in enrolling

might be gleaned, a fact CAB has considered a necessary element of sustainable support. *See Helen Murry*, p. 8. Thus, evidence of sustainable support is lacking.

II. The revised application does not demonstrate the capability of the applicant, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the charter and fails to describe a compete and comprehensive curriculum that is aligned to state standards.

A. Support, Planning and Curriculum

Section 1717-A(e)(2)(ii) of the CSL requires a showing of the capability of the charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students. 24 P.S. § 17-1717-A(e)(2)(ii). And, Section 1719-A(5) requires a charter school application to include a description of the curriculum to be provided by the school. 24 P.S. § 17-1719-A(5). The CAB has previously described curriculum as “essentially a roadmap to the school’s operation, goals, teaching strategies and learning methodology.” *Thurgood Marshall Academy Charter School v. Wilkinsburg School District*, slip op. at 11 (Pa. Charter School Appeal Bd., no. 2001-5, filed Jan. 15, 2002). The importance of the curriculum criterion cannot be underestimated. “A charter school’s curriculum provides parents, school districts and the general community with an identification of the educational ideology of the school. In fact, parents might rely on the identification of a particular curriculum in their decision to enroll their children.” *Id.*

Here, Career Tech’s revised application asserts that it will be an independent open-enrollment public high school focusing on STEM-related Career Professionals and will utilize a “whole person” approach and employ a project-based learning method. CR 11a-15a, 31a. The whole person approach features twelve segments, *i.e.*, situational learning, problem-based learning, project-based learning, cross curricular instruction, shared inquiry process, innovation mindset, appreciative inquiry, workforce skills, computer coding skills, restorative justice, trauma

informed instruction, restorative practices, civic engagement, service learning, and entrepreneurship. CR 62a-64a.

The closest thing to a curriculum, however, appears to be the “Framework of Inquiry Document,” CR 633a-663a, but this merely exemplifies the project-based learning approach. Review of the revised application and attendant materials confirms that it does lack substance. For example, regarding technical subjects, the revised application includes only generalized areas of learning such as engineering, robotics, architecture and welding, but there is little to no information included in the submitted curriculum materials of scope and sequence that supports the program. CR. 1033a. Further, because the overall curriculum is so heavily project-based and because there is no alignment between the curriculum and the standards, there is no practical way to assess if standards will be met. Another example of the lack of substance is in the plan for Mondays, which are set aside for visit and community service without description of what services, where will they be, how students will get there, and what will be the role of the mentors there, among other missing details.

The proposal here bears some notable resemblance to one considered in *In Re: Education InnovationsLAB Charter School*, CAB 2007-01 (2007). There, CAB stated:

The Charter School proposes to use Destination Success, an online program, as its core curriculum for Math, Science and Literacy. Destination Success is a supplemental program and has not been used as a core instructional program in any school. There is no research that validates Destination Success as a core instructional program. There is also no written curriculum for reading and mathematics and no clear plan for how such a curriculum is to be developed. In addition to Destination Success, the Charter School proposes to have six Laboratories of Inquiry or LABs.

...

The LABs are to promote inquiry-based teaching and learning but there is not a plan for training and implementing inquiry-based teaching and learning. Since there is no curriculum available, the CAB cannot verify that inquiry-based teaching and learning will be promoted. In addition, because there is no written curriculum

available the CAB cannot verify that the curriculum is aligned to Pennsylvania standards.

Id. at p. 13. Our decision today is consistent with that one.

Even more fundamental to Career Tech's revised application however, it that while the school plans for grades 9-12, it supplied *no curriculum whatsoever* at all for grade 12, except to be able to pass the entrance exam for the local community college. No plans are proffered for those who do not pass. In short, substance is woefully lacking.

B. Expanded choices

Section 1702-A(5) requires a charter school to "provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system." 24 P.S. § 17-1702-A(5). "The purpose of the statute is to encourage the use of innovative methods. Charter Tech maintains that the opportunity to earn career credentials in the form of a college certificate or associate degree is what sets it apart, noting that some of its specific college degree options are not ones currently offered by the School District. However, most of the programs are already in place and merely offering a few additional degree options, itself, is not innovative.

C. Students with disabilities

The revised application contains no plan for instruction for those who need an alternative curriculum or for how related services required by an Individualized Education Program would be provided. Also missing are expulsion procedures and alternative placement procedures for these students. While it is true that the charter school need provide only a general plan, *see e.g., In re: Appeal of Denial of Charter of Pocono Mountain Mathematics Sciences and Technology Charter School by the Pocono Mountain School District*, Docket No. CAB 2004-05, p. 17, here the "plan" is merely a recitation of goals such as the Charter School will provide a Fair and Appropriate

Public Education (FAPE), it will comply with the law, there will be an educational manager to monitor compliance, it will use the Intermediate Unit as needed, along with general statements that Career Tech understands what the law requires. CR 175a-178a. This is not a practical plan.

D. Conformity with the CSL and legislative intent

1. Improved Pupil Learning

Career Tech asserts that the Student Evaluation for Continuous Improvement provision in the revised application, (CR 163a), which requires students, with teacher and parent input, to set personal learning goals which will be evaluated, establishes this criterion. However, the projects and their goals are vague and provide no benchmark for analysis. In the same vein, Career Tech asserts that it will provide increased learning opportunities for all students, again relying on the whole person approach. In addition to the classroom experiences through community college courses mentioned above, it relies on various letters of support, *e.g.*, one from Students for the Advancement of Global Entrepreneurship (SAGE GLOBAL) and one from Community Robotics, Education and Technology Empowerment (CREATE Lab), as sample programming. *See* CR 268a, 279a. However, the record shows that while there is a significant number of such letters, they evidence general support and provide nothing of substance.

2. Encouragement of use of different and innovative teaching methods

Career Tech relies on its curriculum description to establish that the whole person learning approach is innovative. However, there are other schools in the School District that have already implemented comprehensive cross-curricular project-based learning. CR 1057a. Thus, its techniques are not innovative. Moreover, the only real evidence of any *substantive* material not offered elsewhere is the recognition by the Pittsburgh School Board that although the revised

application duplicates fifteen Career and Technical Education (CTE) programs it does add seven additional offerings. CR 1537a-1538a. This is simply insufficient.

3. Creation of new professional opportunities for teachers

Again, Career Tech falls short because its revised application is not content specific. For example, it argues that it will provide two-week summer sessions to include training, observation/assessment, direct involvement in development and improvement process, study groups, inquiry/action research, mentoring and individually guided activities. CR 148a. It will also provide an orientation for those new to the school on “the culture, themes, comprehensive Project-Based Learning, and curriculum, *i.e.*, “Framework of Inquiry” of the school. *Id.* Both school employees and outside consultants will be lecturers. *Id.* There will also be educational modeling and coaching. *Id.* It proposes to create a staff development plan and convene a professional development committee to enable the plan. CR 149a. These are goals, however, and not a plan with any sort of specificity.

III. The proposed charter is not financially viable.

The budget submitted by an applicant need only provide sufficient evidence that “the charter school has considered fundamental budgeting issues and has determined it will have the funds to operate.” *In re: Lincoln-Edison Charter School*, Docket No. CAB 2000-11, p. 17. The CSL does not require specifics in the budget so long as it can be determined that the applicant is capable of providing a comprehensive learning experience for students. *Central Dauphin School District v. Founding Coalition of the Infinity Charter School*, 847 A.2d 195, 202 (Pa. Cmwlth. 2004).

Here, the plan lacks specificity as to how staff will be paid and how many teachers will be needed. It also lacks supporting documentation regarding a proposed startup grant. The only

specific revenue source identified is tuition from the School District. The single page financial document, *see* CR 628a, is patently insufficient to establish financial viability.

IV. **The revised application does not include a governance structure that complies with local, state and federal laws and fails to include an adequate understanding of the applicability of the Ethics Act and conflicts thereunder.**

The School District points out that the charter calls for creating *Career Tech High School*, but the applicant is ReFocusedEd Inc., and there are references to both middle and elementary schools for which a charter is apparently not sought, and which would be governed by a single Board of Trustees. It also argues that the number of times the Board of Trustees will meet annually is inconsistent in different places in the revised application. Further, it maintains there is also no information on how the CAO will be evaluated other than by using evaluation criteria that is used for teachers, despite them being entirely different roles. Additionally, the bylaws do not clearly delineate that the CAO has no voting rights. It further points out that the CAO is not a member of the Board of Trustees and cannot bind it to any contracts without there being a process for the Board of Trustees to designate that person so do so. While these are legitimate observations, they appear to be matters that could be cured by revision to the Bylaws. However, despite the revised application, they were not.

Of special note are alleged violations of the Public Official and Employee Ethics Act. 65 Pa. C.S. §§1101-1113, *as amended*. Specifically, the School District points out that two Board of Trustee seats are being held by school founders who intend to become employees and that the Ethics Act forbids employees *or future* employees from serving as Board members. Relatedly, it contends that the process for filling a board vacancy also violates the Ethics Act because it will permit the CAO, an employee, to nominate a board replacement who will in turn have responsibility for hiring and setting compensation for the CAO, among others. The School District

cites no specific statutory provisions to support its asserted Ethics Act violations. Fortunately, this precise issue need not be resolved here, however, because it is beyond the jurisdiction of this tribunal to adjudicate violations under the Ethics Act. What CAB does determine is that the insensitivity to possible Ethic Act violations demonstrates a decided lack of needed sophistry on the part of Career Tech.

V. **The revised application fails to demonstrate that the applicant can serve as a model for other public schools in the School District.**

The School District argues that Career Tech cannot serve as a model because it lacks a curriculum, citing to *In Re Environmental Charter School*, CAB 1999-14, pp. 20-21. It also contends, as discussed above, that many of the programs Career Tech claims are unique are not. Career Tech counters that the existence of similar programs does not mean it cannot be a model, citing *In Re Infinity Charter School Appeal from Denial of Charter by Central Dauphin School District*, CAB 2002-4, p.17. There, CAB explained that merely because the school district already provided a program for gifted students, it did not follow that the charter school could not be a model because its program for gifted students was “innovative and distinctive.” *Id.*

Career Tech also points out, however, that the Pittsburgh School Board’s decision does not explain *why* Career Tech cannot be a model and, thus, this issue is waived, citing *School District of Pittsburgh v. Provident Charter School for Children with Dyslexia*, 134 A.3d 128, 135 n. 9 (Pa. Cmwlth. 2016). There, the court wrote: “In its May 1, 2014, letter to Provident, the School District stated that one of the bases for the denial was Provident’s ‘[f]ailure to serve as a model for other schools in the District.’ ... However, the School District’s actual written denial did not explain this point, and the School District did not raise it in the appeal to the Appeal Board. It is waived.” *Id.* at 135, n. 9. (Internal citation omitted.) CAB agrees that the issue is waived under the holding in

Provident Charter. However, the result in this case does not change, given the other major deficiencies.

VI. The deficiencies are not *de minimis*.

While a few matters as discussed above may be amenable to corrections, the lack of a curriculum, the lack of innovations and the paucity of financial start up details area assuredly not. Therefore, there is no basis to deem the deficits here, overall, to be *de minimis*.

CONCLUSION

Based on the findings of fact and conclusions of law set forth, and as discussed in this opinion, CAB has determined that Career Tech has not met the requirements of the CSL. Thus, the decision of the Pittsburgh Board of Education for the School District of Pittsburgh will be upheld, and an appropriate Order follows.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
STATE CHARTER SCHOOL APPEAL BOARD

Career Tech Charter High School :
Petitioner, :
 : CAB Docket No. 2021-01
v. :
 :
School District of Pittsburgh, :
Respondent :

ORDER

AND NOW, this 9th day of March, 2022 based on the foregoing findings of fact, conclusions of law and discussion, and the vote of this Board³ the appeal of career Tech Charter High School is **DENIED**.

For the State Charter School Appeal Board


Chair

For the Charter School: Patricia A. Hennessy Esq.
Christopher A. Barrett Esq.
Barton Gilman, LLP
1500 Market Street
Centre Square
West Tower Suite 4000
Philadelphia PA 19102-2100

phennesy@bglaw.com
cbarrett@bglaw.com

For the District: Jocelyn Kramer, Esq.
Kelly Perkovich, Esq.
Weiss, Burkhardt, Kramer, LLC
445 Fort Pitt Boulevard

³ At the Board's meeting on January 11, 2022, the decision was affirmed by a vote of 5 to 0 with Members Ortega, Schwartz, Marten, Faustman and Killion voting to deny the appeal.

Suite 503
Pittsburgh, PA 15219

jkramer@wbklegal.com
kperkovich@wbklegal.com

Docketing:

RA-EDCHARTERBOARD@pa.gov

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