

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

YOUNG SCHOLARS OF McKEESPORT	:	
CHARTER SCHOOL	:	
APPELLANT	:	CAB Docket No. 2013-14
	:	
	:	
v.	:	
	:	Appeal from the June 26, 2013
McKEESPORT AREA SCHOOL DISTRICT	:	Decision of the McKeesport Area
APPELLEE	:	School District

OPINION

I. BACKGROUND

This matter comes before the Pennsylvania State Charter School Appeal Board (“CAB”) on appeal by the Young Scholars of McKeesport Charter School (“YSMCS”) from the denial of its 2012 Charter School Application by the McKeesport Area School District (the “District”).

II. PROCEDURAL HISTORY

On November 15, 2012, YSMCS filed an application with the District to open and operate a public charter school pursuant to the Pennsylvania Charter School Law (“CSL”), 24 P.S. § 17-1701 *et.seq.* A public hearing was held before the District on December 28, 2012. During a special legislative session on March 12, 2013, the District’s Board voted to deny YSMCS’s charter application and a written denial followed on March 13, 2013.

The District denied YSMCS’s application for being deficient on the following grounds: (1) it failed to show “[t]he demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the public hearing held under subsection (d)”; (2) it failed to show “[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”; (3) the application did not “sufficiently consider the information requested in section 1719-A or conform to the legislative intent outlined in section 1702-A”; and (4) the charter school would not serve as a model to other schools in the District.

YSMCS then submitted a 2012 Charter School Application for Reconsideration (“Revised Application”) on April 26, 2013. On June 26, 2013, the District held public hearings and voted to deny YSMCS’s Revised Application. The District based its decision to deny YSMCS’s Revised Application on the same grounds as in its prior denial of YSMCS’s original application. The District provided YSMCS with written notice of its denial by letter dated July 1, 2013.

On August 29, 2013, YSMCS filed an Emergency Petition to Certify Petition for Appeal (the “Petition”) with the Court of Common Pleas of Allegheny County. The Allegheny County Court of Common Pleas issued an Order dated November 18, 2013 certifying the Petition and authorizing YSMCS to file its appeal with CAB.

On December 13, 2013, YSMCS filed the present appeal, and the District filed its Response to Appeal and Appellee’s Reproduced Record on January 24, 2014. By letter dated January 31, 2014, YSMCS notified CAB that the Reproduced Record submitted by the District was incomplete because it failed to include YSMCS’s Revised Application, and also did not contain the District’s July 1, 2013 Denial Letter regarding YSMCS’s Revised Application. Copies of the Revised Application and Denial Letter were subsequently provided to CAB and included within the Record by way of stipulation entered between the Parties. The Parties, thereafter, agreed to submit this appeal on briefs without the need for a formal hearing. Having

received the briefs set forth in the Hearing Examiner's May 19, 2014 Order, this matter is now ripe for determination by CAB.

III. FINDINGS OF FACT

1. On November 15, 2012, YSMCS filed an application with the District to open and operate a public charter school pursuant to the Pennsylvania Charter School Law ("CSL"), 24 P.S. § 17-1701 *et. seq.* (Reproduced Record).

2. The District held a public hearing on the application on December 28, 2012. (Reproduced Record).

3. During a special legislative session on March 12, 2013, the District's Board voted to deny YSMCS's charter application.

4. The District provided notice of its denial to YSMCS by letter dated March 13, 2013. (Reproduced Record).

5. The District denied YSMCS's application as being deficient on the following grounds: (1) it failed to show "[t]he demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the public hearing"; (2) it failed to show "[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"; (3) the application did not sufficiently consider the information requested in section 1719-A, or conform to the legislative intent outlined in section 1702-A; and (4) the charter school would not serve as a model to other public schools in the District. (Reproduced Record).

6. YSMCS submitted a revised application (“Revised Application”) to the District on April 26, 2013. (Reproduced Record/ Revised Application).

7. At its regular meeting of June 26, 2013, the District denied YSMCS’s Revised Application. (Reproduced Record).

8. The District provided its notice of denial to YSMCS by letter dated July 1, 2013 and based its denial on the same grounds as it had with its prior denial of YSMCS’s original application. (Reproduced Record).

9. YSMCS filed a timely Emergency Petition to Certify Petition for Appeal (the “Petition”) with the Allegheny County Court of Common Pleas on August 29, 2013. (Board Records-Official Notice¹).

¹ 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 §31.1 *et. seq.*, at §35.173, which provides, in pertinent part, as follows:

§35.173. Official notice of facts.

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. . . .

1 Pa. Code §35.173.

Official notice is also permitted under case law. *See, for example, Falasco v. Commonwealth of Pennsylvania Board of Probation and Parole*, 521 A. 2d 991 (Pa. Cmwlth. 1987), in which the Commonwealth Court explained:

“Official notice” is the administrative counterpart of judicial notice and is the most significant exception to the exclusiveness of the record principle. The doctrine allows an agency to take official notice of facts which are obvious and notorious to an expert in the agency’s field and those facts contained in reports and records in the agency’s files, in addition to those facts which are obvious and notorious to the average person. Thus, official notice is a broader doctrine than is judicial notice and recognizes the special competence of the administrative agency in its particular field and also recognizes that the agency is a storehouse of information on that field consisting of reports, case files, statistics and other data relevant to its work.

521 A. 2d at 994 n. 6.

10. By Order dated November 18, 2013, the Allegheny County Court of Common Pleas certified the Petition and authorized YSMCS to file the instant appeal with CAB. (Board Records-Official Notice).

11. YSMCS timely filed the present appeal from the denial of its application on December 13, 2013. (Board Records-Official Notice).

12. The District filed a Response to YSMCS's Appeal and Appellee's Reproduced Record on January 24, 2014. (Board Records-Official Notice).

13. By way of stipulation, the Reproduced Record filed by the District on January 24, 2014 was supplemented with YSMCS's Revised Application and the District's July 1, 2013 Denial Letter. (Board Records-Official Notice).

14. The Parties agreed to submit this appeal on briefs without the need for a formal hearing as memorialized in a May 19, 2014 Order of the Hearing Examiner. (Board Records-Official Notice).

Demonstrated Sustainable Support

15. YSMCS submitted 30 petition forms with its Revised Application containing the names of approximately 450 individuals at Appendix B. (Revised Application).

16. Each petition form contained the following language:

Petition in Support of the Opening of the YOUNG SCHOLARS OF MCKEESPORT Charter School in September 2013. The undersigned below indicate through their signatures their support for the approval of the YOUNG SCHOLARS OF MCKEESPORT Charter School to be located in the McKeesport Area School District. We urge the Board of Education of McKeesport Area School District to approve the application submitted by the Founders.

(Revised Application).

17. The individuals who signed the petitions specifically expressed their support for YSMCS. (Revised Application).

18. In addition to demonstrating support for YSMCS in general, these petitions represent the potential enrollment of approximately 71 students.

19. YSMCS additionally included within its Revised Application approximately 17 pre-enrollment forms each of which stated the following:

I understand that the Young Scholars of McKeesport Charter School has not yet been granted a charter. By signing this pre-enrollment form, I am stating my intent to send my child(ren) to the Young Scholars of McKeesport Charter School...If a charter is granted for the school, I understand that I will need to complete official enrollment documents in order for my child(ren) to be enrolled in the school.

(Revised Application).

20. These pre-enrollment forms demonstrate an intention to enroll approximately 34 additional students into YSMCS.

21. YSMCS has also submitted 12 Pre-Enrollment Forms and two letters of support which similarly indicate support for YSMCS and the pre-enrollment of approximately 14 students. (Revised Application).

22. Two members of the McKeesport community testified in favor of the charter applicant at the December 28, 2012 hearing before the District. (N.T. 25-29).

Increased Learning Opportunities and Expanded Educational Choices

23. YSMCS anticipates educating “a student who is conversant in at least two major world languages and understands the interdependence of the world’s peoples.” (Revised Application, pp. 7, 15).

24. YSMCS is different from the District in that it anticipates that its students will be conversant in at least two major world languages in conjunction with developing a global

perspective into various regions of the world, their cultures and their traditions. (Revised Application, p. 7).

25. YSMCS plans to “utilize research-based pedagogy that is designed to foster language learning as well as impart a global perspective that promotes appreciation and understanding of world languages, regions, cultures and traditions...”. (*Id.*).

26. YSMCS plans to create an “instructional environment in which students encounter rigorous instruction in their individual vernacular as well as immersion in other languages to create a common bond among all students, especially students who are non-English speakers.” (*Id.*).

27. The dual language immersion program and implementation of the Pennsylvania Department of Education Standards Aligned System (“SAS”) mapping envisioned by YSMCS is different from the District’s language program and curriculum in both its methods and achievement goals. (Revised Application, pp. 15-30, 79-80).

Complete and Comprehensive Curriculum and Assessment

28. YMSCS’s Revised Application describes how it will align its all-curricular content to SAS. (Revised Application, pp. 15, 79).

29. Because YMSCS will initially encompass Kindergarten through fourth grade, then add one grade each successive year, its Revised Application provides SAS Curriculum MAPS for Kindergarten through fifth grade. (Revised Application, App. “H”).

30. YMSCS anticipates completing the remaining portions of its alignment prior to its students starting grade six. (Revised Application, p. 15).

31. The design of the YSMCS curriculum is based upon the National and Pennsylvania World Language Standards and aligns with Pennsylvania State Standards, Anchors

and Eligible Content in Reading, Writing, Speaking, and Listening. (Revised Application, p. 17).

32. The YMSCS Revised Application describes the programs it will use and provides examples of the anticipated sequence of progress and teaching methods during successive years. (Revised Application, pp. 19-30).

33. The YMSCS Revised Application sets forth the curriculum goals and objectives for grades one through eight. (Revised Application, p. 19-30).

34. The YMSCS Revised Application describes the daily methods by which the English/Language Arts curriculum will be administered. (Revised Application, p. 30).

35. The YMSCS Revised Application provides information regarding YSMCS's Mathematics Curriculum including, but not limited to, a description of its major characteristics, a description of daily instructional time, and explanations surrounding its use of Study Island and the STAR Math Enterprise as an assessment tool. (Revised Application, pp. 32-39).

36. The YSMCS Science Curriculum, Technology Education Curriculum, and Social Studies Curriculum sections describe the curricula to be implemented and the charter school's anticipated use of the SIOP content-based model to be used by teachers. (Revised Application, pp. 39- 51).

37. YSMCS's Revised Application addresses the methods and application of its English as a Second Language program and plans for addressing students with special needs. (Revised Application, pp. 55-58).

38. YSMCS's Revised Application includes "PA Standards Aligned System (SAS) Curriculum Mapping," from pages 355 through 1256 of the Revised Application. (Revised Application, Appendix "H").

39. YSMCS's Curriculum Mapping provides a unit-by-unit weekly break-down of the subject matter to be taught and identifies the Office of Child Development and Early Learning and PA Common Core Standards to be addressed at each grade level. (Revised Application, Appendix "H").

40. YSMCS's Revised Application addresses the assessment tools and methods it will implement. (Revised Application, pp. 19, 30, 63-69).

41. YSMCS's Revised Application identifies multiple methods for evaluating whether students are meeting educational goals, including the administration of standardized tests such as PSSA and PASA, data collection, the preparation of reports memorializing academic achievement and other metrics. (Revised Application, pp. 68-69).

42. In addition to performing objective evaluations, YSMCS will utilize Response to Intervention methods. (Revised Application, p. 68).

43. Student evaluations will be accomplished on a daily basis; and as students are evaluated, educational programming will be individualized, modified and remedied as necessary. (Revised Application, p. 69).

44. Formal and informal assessments and observations will be used to assess students. The format of such assessments will include ensuring the completion of individual assignments, classroom participation, informal observations, group projects, and periodic quizzes and examinations. (Revised Application, p. 19).

45. The assessments will be based on rubrics and norm and criterion-referenced assessment tools. (Revised Application, p. 19).

46. YSMCS will use current data-driven instruction and assessments, including the skills-based and adaptive testing provided through STAR math, accelerated math, scholastic reading inventory, DIBELS, and eBook-It. (N.T. 13-15).

47. Based on reports generated through these methods, the school will provide two to three assessments throughout the school year to assess the extent of a student's learning. (N.T. 14-15).

48. YSMCS will utilize the 4Sight Benchmark assessment tool four to five times per school year. (N.T. 15). The results of the assessments will be shared with teachers on at least a monthly basis. *Id.*

49. Students' progress, strengths and weaknesses will be evaluated every other week, and an individual action plan will be developed and periodically assessed. (N.T. 15).

50. A scholastic reading inventory will be administered to YSMCS students who will have to meet or exceed certain criteria to advance to a higher reading and comprehension level. (N.T. 16-17).

51. YSMCS will sponsor websites through which parents will have access to student evaluations and assessment results. (N.T. 16). Reading students will also take online tests to evaluate their progress, and other competency tests will be administered. (N.T. 16, 18).

52. YSMCS's certified educators will be required to complete six college credits, six credits of continuing professional education courses, or any combination of collegiate studies and continuing professional education courses or learning experiences equivalent to 180 hours every five years consistent with Pennsylvania academic standards. (Revised Application, p. 61).

53. YSMCS will establish a professional development committee designed, in part, to meet Pennsylvania SAS. (Revised Application, p. 61).

54. YSMCS's staff development in the first year will also include an intensive two-week session focusing on the areas outlined on page 61 of the Revised Application. (Revised Application, p. 61).

55. Key staff will attend training workshops on Direct Instruction, and selected staff members will develop expertise in areas of curriculum before serving as mentors and trainers of other staff. (Revised Application, p. 61).

56. YSMCS's Revised Application acknowledges the school's intention to comply with the Disabilities Education Improvement Act of 2004; the No Child Left Behind Act; Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act; the Family Educational Rights and Privacy Act; the Gaskin Settlement Agreement; and the Pennsylvania Code. (Revised Application, p. 56).

57. YSMCS will employ a full-time Special Education teacher who meets all certification criteria mandated by the Pennsylvania Department of Education and a full-time English as a Second Language teacher to provide support services when needed. Students requiring additional special needs services will receive those services through contracts with appropriate service providers, including but not limited to, McKeesport Area School District and the Allegheny Intermediate Unit. (Revised Application, p. 56; N.T. 13).

58. The District imposed time constraints upon the YSMCS witnesses who testified at the December 28, 2012 hearing regarding YSMCS's proposed curriculum. During the hearing, the District indicated its desire to abbreviate oral testimony in favor of relying upon YSMCS's original written application. (N.T. 4, 12, 18).

Financial Plan

59. Section IV of YSMCS's Revised Application entitled "Finance and Facility" identifies the charter school's projected revenue sources, budget and expenses. (Revised Application, pp. 99-101).

60. The Revised Application identifies Estimated State Aid as the school's basic source of revenue and articulates the manner by which Estimated State Aid is calculated. (Revised Application, p. 99-101).

61. YSMCS identifies other sources of revenue, including general-purpose aid programs, the state transportation aid program, federal funds for child nutrition, federal charter school grants, and grants and donations from local charitable foundations. *Id.*

62. YSMCS anticipates receiving approximately \$100,000.00 from Planning and Implementation Grants through the Public Charter Schools Program and \$50,000.00 from private loans. (Revised Application, pp. 99-100, 102).

63. Members of the Board of Trustees will make personal donations to fund the start-up of the school, and the school will potentially pursue financing options through bank loans, not exceeding \$75,000.00. (Revised Application, pp. 99-100, 102).

64. YSMCS's Revised Application identifies projected operational expenses, including average teacher salaries, health and dental insurance, and other similar expenses. (Revised Application, p. 100).

65. Additional details of YSMCS's 5-year operational budget are set forth in the Revised Application at Appendix "F".

66. The Budget within the Revised Application further describes the method of accounting to be used by YSMCS, describes its payroll system, and provides the methods by

which audits will be conducted and financial statements prepared. (Revised Application, pp. 100-104).

YSMCS Ability to Serve As a Model for Other Public Schools

67. Young Scholars of Central Pennsylvania in State College, Pennsylvania, has achieved AYP every year since opening in 2005. (N.T. 10).

68. By 2010, Young Scholars of Central Pennsylvania in State College was ranked in the top 10-15 charter schools in Pennsylvania. (N.T. 10-11).

IV. CONCLUSIONS OF LAW

1. The Charter School Law, Act of June 19, 1997, P.L. 225, 24 P.S. § 17-1701-A, *et seq.*, (“CSL”) governs the application and approval process for charter schools in Pennsylvania.

2. Section 1717-A(e)(2) of the CSL sets forth the factors to be used when evaluating a charter school application:

- (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 held under subsection (d);
- (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.

3. CAB has jurisdiction over this appeal pursuant to 24 P.S. §§ 17-1717-A(f), 17-1721-A, and 17-1746-A(a)(1).

4. CAB applies a *de novo* standard of review when considering decisions denying charter school applications. *West Chester Area School District v. Collegium Charter School*, 812 A.2d 1172, 1180 (Pa. 2002).

5. YSMCS, through the record established at the hearing and through its Revised Application, demonstrated sustainable support for its charter school plan as required by 24 P.S. § 17-1717-A(e)(2)(i).

6. YSMCS, through the record established at the hearing and through its Revised Application, demonstrated its capability, in terms of support and planning, to provide comprehensive learning experiences to students as required by 24 P.S. § 17-1717-A(e)(2)(ii).

7. YSMCS, through the record established at the hearing and through its Revised Application, provided all of the information required by 24 P.S. § 17-1717-A(e)(2)(iii) and 24 P.S. § 17-1719-A(1)-(17) and has conformed with the legislative intent outlined in section 1702-A.

8. YSMCS, through the record established at the hearing and through its Revised Application, demonstrated its capability to serve as a model for other public schools as required by 24 P.S. § 17-1717-A(e)(2)(iv).

V. DISCUSSION

A. Introduction

The District denied YSMCS's Revised Application for failing to: (1) demonstrate "sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the public hearing"; (2) establish "[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"; and (3) "sufficiently consider

the information requested in section 1719-A or conform to the legislative intent outlined in section 1702-A.”

Subsumed within the District’s second and third grounds are several contentions upon which the District relies. Specifically, the District contends that YSMCS: (1) failed to provide students with expanded choices in the types of educational opportunities currently being offered by the District; (2) failed to describe a complete and comprehensive curriculum that is aligned to State standards; and (3) failed to provide a financial plan that is based upon actual costs, thereby casting doubts upon the credibility of its overall financial plan. The District’s fourth and final ground for denying YSMCS’s Revised Application was that YSMCS failed to demonstrate that it can serve as a model for other schools within the McKeesport School District.

B. Standard of Review

CAB applies a *de novo* standard of review when considering decisions denying charter school applications. *West Chester Area School District v. Collegium Charter School*, 812 A.2d 1172, 1180 (Pa. 2002). In an appeal before CAB, the decision made by the local board of school directors shall be reviewed by CAB on the record as certified by the local board of school directors. CAB shall give due consideration to the findings of the local board and specifically articulate its reasons for agreeing or disagreeing with those findings. 24 P.S. § 17-1717-A(i)(6). CAB has articulated its authority to give “due consideration” to a school board’s decision under the CSL by stating: “since it has to agree or disagree with the findings of the Directors, [it] can of necessity, determine the weight of the evidence behind each finding and draw its own conclusions.” *In re: Hills Academy Charter School*, CAB Docket No. 1999-12. Further, the Pennsylvania Commonwealth Court has held that in the case of a denial of a charter school application “[t]he General Assembly has unquestionably granted CAB the authority to substitute

its own findings and independent judgment for that of the local board.” *West Chester Area School District v. Collegium Charter School*, 760 A.2d 452, 461 (Pa. Cmwlth. 2000). Therefore, while giving due consideration to the District’s decision in this case, CAB independently reviewed the record in accordance with the requirements of the CSL.

C. Demonstrated Sustainable Support

Section 1717-A(e)(2)(i) of the CSL provides that an application is to be evaluated based upon the “demonstrated, sustainable support for the charter school by teachers, parents, other community members and students, including comments received at the public hearing held under subsection (d).” 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.” *Bear Creek Community Charter School*, CAB Docket No. 2003-3. “Sustainable support” consists of a reasonable amount of support in the aggregate, not by individual categories. *Brackbill v. Ron Brown Charter School*, 777 A.2d 131, 138 (Pa. Cmwlth. 2001); *Phoenix Academy Charter School*, CAB Docket No. 1999-10; *Hill Academy Charter School*, CAB Docket No. 1999-12. See also *Central Dauphin School District v. Founding Coalition of the Infinity Charter School*, 847 A.2d 195, 200 (Pa. Cmwlth. 2004) (emphasis of the Charter School Law is on the applicant showing that the charter school enjoys reasonably sufficient support from the community, not showing some minimum level of support from each of the more discrete groups listed). Moreover, CAB has found that the CSL did not intend for the list set forth at 24 P.S. § 17-1717-A(e)(2)(i) to be “mutually exclusive or exhaustive.” *Penn Hills Charter School*, CAB Docket No. 2001-7. A failure to demonstrate strong support in any one category is not necessarily fatal to an application. *Id.*

In this case, the YSMCS submitted 30 petition forms with its Revised Application containing the names of approximately 450 individuals at Appendix B.² Each of the petition forms contained the following language: “The undersigned below indicate through their signatures their support for the approval of the YOUNG SCHOLARS OF MCKEESPORT Charter School to be located in the McKeesport Area School District.” Thus, it is clear on the face of the petitions that those who signed them specifically expressed their support for YSMCS.

Additionally, YSMCS included with its Revised Application approximately 17 Pre-Enrollment Forms, each of which stated the following:

I understand that the Young Scholars of McKeesport Charter School has not yet been granted a charter. By signing this pre-enrollment form, I am stating my intent to send my child(ren) to the Young Scholars of McKeesport Charter School...If a charter is granted for the school, I understand that I will need to complete official enrollment documents in order for my child(ren) to be enrolled in the school.

The Pre-enrollment forms clearly indicate an intention to enroll approximately 34 additional students into YSMCS.

Similarly, YSMCS submitted approximately 40 Educational Improvement Survey Forms identifying at least another 71 potential students for enrollment. Although the Forms do not contain the particular names, ages or grades of the students to be enrolled, and do not commit to enrollment, they demonstrate support for the YSMCS in general, and represent the potential enrollment of approximately 71 students.³ The YSMCS has also submitted 12 Pre-Enrollment

² To the extent YSMCS obtained additional signatures as part of its appeal to the Court of Common Pleas of Allegheny County, the additional signatures will not be considered by the CAB as a showing of community support for having not been part of the record upon which the District evaluated YSMCS's Revised Application.

³ Reference to Young Scholars of Western Pennsylvania on the bottom portion of each survey form appears to have been made in error as evidenced by the title of each survey form, “Young Scholars of McKeesport Charter School,” and the addresses of those completing the forms.

Forms and two letters of support which similarly indicate support for YSMCS and the actual pre-enrollment of approximately 14 students.

Two members of the McKeesport community testified favorably on behalf of YSMCS at the December 28, 2012 hearing. Although one of the witnesses was a real estate agent who maintains the property listing on behalf of the church where the proposed school is to be located, the witness's testimony was found to be credible by the Board, as was the testimony of the second witness who testified in favor of the charter school. Although the District has offered correspondence from local elected officials which, it contends, counters the testimony of the two charter school witnesses, their opposition cannot serve to negate the aggregate support offered by the multiple community members offered by YSMCS. Indeed, it is the degree of support for a proposed charter school plan that is relevant, not the degree of opposition thereto. *In re: Propel Charter School of McKeesport*, CAB Docket No. 2004-1.

Further, a careful review of the basis for the officials' purported opposition to the charter school reveals that their comments were not directed towards particular shortcomings of YSMCS but, instead, were based upon their general opposition to the charter school system. Based upon its review of the record, in the aggregate, CAB finds that YSMCS has established demonstrated and sustainable support for its school, and that YSMCS has satisfied this prong of the review as required by the CSL.

D. Increased Learning Opportunities and Providing Expanding Educational Choices

Section 17-1702-A of the CSL provides that the intent of the General Assembly in enacting the CSL was *inter alia*:

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:

- (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.

24 P.S. § 17-1702-A.

The CSL does not set a limit on the number of options or programs that may be available at a proposed charter school. Instead, the CSL requires only that the charter school application set forth the opportunity for parents and pupils to have “expanded choices” by the creation of the charter school that is the subject of the application. *In re: Propel Charter School McKeesport*, CAB Docket No. 2004-1. Moreover, the CSL “does not require that the charter school go over and above the programs of the school district in order to be an appropriate alternative.”

McKeesport v. Propel Charter School, 888 A.2d 912, 918 (Pa. Cmwlth. 2005).

CAB has previously recognized that every aspect of a charter school is not required to be different from the school district. *City College Prep*, CAB Docket No. 2006-1. Instead, “[t]he purpose of the statute is to encourage the use of innovative methods, not to exclude charter applicants whose proposed methods may not be as innovative or as different as the school district believes they should be.” *Sugar Valley Rural Charter School*, CAB Docket No. 1999-4.

In *Montour School District v. Propel Charter School-Montour*, 889 A.2d 682, 688 (Pa. Cmwlth. 2006), the Pennsylvania Commonwealth Court held that similarities alone are insufficient to support a finding of noncompliance with the CSL when there is substantial evidence of uniqueness. In that case, the Court noted that the legislative intent behind the CSL is “to establish and maintain schools that operate independently from the existing school district structure as a method to accomplish...[and e]ncourage the use of different and innovative

teaching methods.” *Id.* at 687. The Court went on to conclude that the appellant in that case offered an educational experience that was unique and different from that in the district’s public schools and, therefore, was in keeping with the intent of the CSL. *Id.* at 688.

In this case, the District denied YSMCS’s Revised Application, in part, because the school purportedly failed to provide expanded choices to students in the available types of educational opportunities because it offered substantially similar content to that already being offered in the McKeesport Area School District. Specifically, the District cites to its existing Comprehensive Plan which addresses the need for a World Language program in the elementary schools, *i.e.*, one of YSMCS’s main purposes for opening in the McKeesport area. Accordingly, the District asserts that YSMCS’s proposed program fails to offer anything different by way of foreign languages from that which the District already offers, or intends to offer.⁴ In particular, the District asserts that its Kindergarten through Sixth Grade have provided world language instruction with a magnet focus on world languages at its Francis McClure Primary/Intermediate School since 2013.

Through its Revised Application, YSMCS anticipates educating “a student who is conversant in at least two major world languages and understands the interdependence of the world’s peoples.” To facilitate those ends, YSMCS plans to create an “instructional environment in which students encounter rigorous instruction in their individual vernacular as well as immersion in other languages to create a common bond among all students, especially students who are non-English speakers.” YSMCS further plans to “utilize research-based pedagogy that

⁴ The District further asserts that “Outside the scope of instruction in World Languages... YSMCS... fails to provide any measurable goals and objectives beyond the realm of mere abstract ideals that lack any stated plan for implementation, measurement, or attainment.” Because those assertions will be addressed in a later section of this opinion, they will not be addressed at this time.

is designed to foster language learning as well as impart a global perspective that promotes appreciation and understanding of world languages, regions, cultures and traditions...”.

Although the District provides its students the opportunity to pursue more than one language through its World Languages Academy, the dual language immersion program envisioned by YSMCS is sufficiently different from the District’s language program in both its methods and achievement goals so as to provide students expanded opportunities from those offered by the District. *See Revised Application*, p. 15. YSMCS anticipates that its students will be conversant in at least two major world languages in conjunction with developing a global perspective on various regions of the world, their cultures and their traditions. For these reasons, CAB concludes that YSMCS will provide alternative learning experiences to its students, will encourage the use of different and innovative teaching methods, and will offer expanded choices to its community.

E. Complete and Comprehensive Curriculum and Assessment

The CSL requires a charter school applicant to demonstrate an ability to provide “the comprehensive learning experience it proposes.” 24 P.S. § 17-1717-A(e)(2)(ii). The CSL further requires an application to include information regarding the “mission and education goals of the charter school, the curriculum to be offered and the method of assessing whether students are meeting educational goals.” 24 P.S. § 17-1719-A(5). In order to provide a comprehensive learning experience to students, a charter applicant must demonstrate adequate support and planning in the charter application. *In re: Environmental Charter School*, CAB Docket No. 1999-14.

The failure of a charter school applicant to provide a sufficient curriculum plan has been found to be a basis for the denial of an application because it is evidence that the proposed

charter school could not be a model for other public schools. *In re: Environmental Charter School*, CAB Docket No. 1999-14. An applicant is required to describe the proposed charter curriculum with substance, not merely in terms of goals and guidelines. *In re: Shenango Valley Regional Charter School*, CAB Docket No. 1999-11; *Howard Gardner Multiple Intelligence Charter School*, CAB Docket No. 2011-4. Although a curriculum must be described in substance, it is not necessary for a charter school to completely describe the contents of its curriculum in detail. *In re: Pocono Mountain Mathematics and Technology Charter School*, CAB Docket No. 2004-5.

With these requirements in mind, YMSCS has set forth in its Revised Application what it contends sufficiently describes the comprehensive curriculum required by the CSL. CAB agrees. Specifically, the Revised Application at page 15 describes how the charter school will align its all-curricular content to the Pennsylvania Department of Education Standards Aligned System (“SAS”). Because the school will initially encompass Kindergarten through fourth grade, then add one grade each successive year, YMSCS’s Revised Application provides SAS Curriculum MAPS for Kindergarten through fifth grade as Appendix “H” to its Revised Application. YMSCS anticipates completing the remaining portions of its alignment prior to its students starting grade six. *See* Revised Application, p. 15. The limited scope of YMSCS’s Revised Application in terms of pertaining only to grades Kindergarten through fourth grade with plans to augment that scope in the future, is acceptable under the CSL. *See e.g., Carbondale Area School District v. Fell Charter School*, 829 A.2d 400, 409 (Pa. Cmwlth. 2003).

As explained on page 17 of the Revised Application, the design of the YSMCS curriculum is based upon the National and Pennsylvania World Language Standards and aligns with Pennsylvania State Standards, Anchors and Eligible Content in Reading, Writing, Speaking,

and Listening. The Revised Application goes on to explain the programs which will be used and provides examples of the anticipated sequence of progress and teaching methods during successive years. YSMCS's Revised Application, beginning at page 19, additionally sets forth the curriculum goals and objectives for grades one through eight.

The Revised Application, beginning at page 30, further describes the daily methods by which the English/Language Arts curriculum will be administered. Beginning at page 32, the Revised Application provides similar information regarding YSMCS's Mathematics Curriculum including, but not limited to, a description of its major characteristics, a description of daily instructional time, and explanations surrounding its use of Study Island and the STAR Math Enterprise as an assessment tool. Similar information regarding the charter school's curriculum is also provided in the Revised Application beginning at page 39 and at page 51 in the areas of the Science, Technology Education, and Social Studies, as well as its use of the SIOP content – based model to be used by teachers. Beginning at page 55, YSMC's Revised Application addresses the methods and application of its English as a Second Language Program, and its plans for teaching students with special needs.

YSMCS's Revised Application also includes as Appendix "H" documents entitled "PA Standards Aligned System (SAS) Curriculum Mapping." Revised Application, pp. 355-1256. The Curriculum Mapping provides curriculum information in a variety of areas, including a unit-by-unit weekly break-down of the subject matter to be taught. Appendix "H" additionally identifies the Office of Child Development and Early Learning and PA Common Core Standards addressed at each grade level.

YSMCS's Revised Application, beginning at page 63, also addresses the assessment tools and methods it will implement. In order to achieve the goal of "hold[ing] the schools established

under [the CSL] accountable for meeting measurable academic standards and provid[ing] the school with a method to establish accountability systems” as set forth at 24 P.S. § 17-1702-A, the CSL requires an applicant to provide information regarding the “mission and educational goals of the charter school, the curriculum to be offered and the methods of assessing whether students are meeting educational goals.” *Montour School District v. Propel Charter School-Montour*, 889 A.2d 682, 687-88 (Pa. Cmwlth. 2006).

In this case, YSMCS identifies multiple methods for evaluating whether its students are meeting educational goals, including administering standardized tests, PSSA, PASA, data collection, the preparation of reports memorializing academic achievement and other metrics. In addition to performing objective evaluations, YSMCS will utilize Response to Intervention methods as described at page 68 of the Revised Application. Student evaluations will be accomplished on a daily basis; and as students are evaluated, educational programming will be individualized, modified and remedied as necessary. *See Revised Application, p. 69.*

Additionally, formal and informal assessments and observations will be used to assess students. The format of such assessments will include ensuring the completion of individual assignments, classroom participation, informal observations, group projects, and periodic quizzes and examinations. The assessments will be based on rubrics and norm and criterion-referenced assessment tools. *See Revised Application, p. 19.*

Commensurate with the information set forth in the Revised Application, YSMCS’s spokesperson, Alpaslan Ozdogan, former CEO of Young Scholars of Western Pennsylvania in Pittsburgh, provided additional information regarding the school’s anticipated curriculum and assessment of its students during his testimony before the District on December 28, 2012. In particular, Mr. Ozdogan confirmed the daily nature of instruction in foreign languages and

explained that the school will use current data-driven instruction and assessments, including the skills-based and adaptive testing provided through STAR math, accelerated math, scholastic reading inventory, DIBELS, and eBook-It. (N.T. 13-15). Based on reports generated through those methods, the school will provide two to three assessments throughout the school year to assess the extent of a student's learning (N.T. 14-15). Mr. Ozdogan also explained that YSMCS will utilize the 4Sight Benchmark assessment tool, four to five times per school year. (N.T. 15). The results of the assessments will be shared with teachers on at least a monthly basis. *Id.* Additionally, each student's progress, strengths and weaknesses will be evaluated every other week, and an individual action plan will be developed and periodically assessed. (N.T. 15). YSMCS students will also be given a scholastic reading inventory and will have to meet or exceed certain criteria to advance to a higher reading and comprehension level. (N.T. 16-17).

Additionally, YSMCS will sponsor websites through which parents will have access to student evaluations and assessment results. (N.T. 16). Reading students will also take online tests to evaluate their progress, and other competency tests will be administered. (N.T. 16, 18).

Against this backdrop, the District denied YSMCS's Revised Application, in part, on the ground that the school failed to describe a complete and comprehensive curriculum that is aligned to State Standards. Subsumed within that ground, the District identified what it believed to be multiple shortcomings within the Revised Application.⁵

⁵ The shortcomings raised by the District consisted of the following:

- 1) failure of the original application to provide any curricula based on Standards Aligned System best practices and failure to mention the Pennsylvania Department of Education's Standards Aligned System anywhere in the application;
- 2) the exclusive use of purchased programs which were researched based upon information provided by the program manufacturers and their implementation without the appropriate use of the Standard Aligned System best practices for curriculum and instructional delivery;
- 3) failure to include a curriculum framework that includes Big Ideas, Concepts, Competencies and Essential Questions;
- 4) inconsistencies between the programs mentioned in the section identifying curricula in the application section of the proposal and the programs and grade level curricula proposed in the 2013-2014 parent handbook;

The record developed in this case, however, indicates that many of the alleged deficiencies identified by the District when initially denying YSMCS's original application were cured through YSMCS's submission of its Revised Application.⁶ The record further establishes that with respect to the purported deficiencies of YSMCS's curriculum, YSMCS's Revised Application satisfies the mandates set forth by the CSL based upon the information provided by YSMCS as discussed above. Many of the purported shortcomings identified by the District reflect what it considers to be the ideal amount of information it would like to receive from an applicant regarding a proposed curriculum. In contrast, however, much of the scope and substance of issues forming the basis of the District's denial are simply not required in order to satisfy the criteria outlined by the CSL at 24 P.S. § 17-1719-A(5).⁷

As for the District's objections to the professional development contemplated by YSMCS, section 1719-A(13) of the CSL requires an applicant to submit a faculty and professional development plan. YSMCS's Revised Application specifically addresses the

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- 5) curricular descriptions are copied directly from the manufacturers' websites as evidenced by Everyday Math and SRA TechKnowledge curricula;
 - 6) professional development plan includes a list of conferences to be attended by teachers which fails to indicate that the conferences will train teachers on the use of the Standards Aligned System and implementation of Common Core Standards;
 - 7) failure to provide professional development that encourages the use of different and innovative teaching methods or which provides new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site;
 - 8) insufficient information regarding the referral process and development of a comprehensive evaluation report for students thought to be exceptional;
 - 9) lack of evidence of a continuum of services provided for identified special educational students;
 - 10) lack of evidence regarding "next steps" for students who are not responding to their individualized educational plan and supports have been exhausted within the school, including students with emotional support issues;
 - 11) lack of a parent involvement plan which is a required portion of an effective special education process; and
 - 12) lack of evidence regarding agency coordination with the school for students who have special education services.

⁶ To the extent an inconsistency exists between the Revised Application and Student Handbook regarding YSMCS's math program extending to the eighth grade, the CAB finds the error to be *de minimis* and capable of easy correction.

⁷ The CAB takes note of the time constraints the District placed upon the witnesses who testified on behalf of YSMCS at the December 28, 2012 hearing when attempting to explain and describe YSMCS's proposed curriculum. Notice is also taken of the District's desire to abbreviate oral testimony in favor of relying upon YSMCS's original written application. (N.T. 4, 12, 18). Accordingly, the CAB will not make negative inferences against YSMCS based upon any alleged failure to provide oral testimony which may have addressed the District's concerns about the adequacy of the YSMCS curriculum.

professional development of its staff at page 61 by explaining that its plan will meet the requirements of Act 48. Certified educators will be required to complete six college credits, six credits of continuing professional education courses or any combination of collegiate studies, and continuing professional education courses or learning experiences equivalent to 180 hours every five years consistent with Pennsylvania's continuing professional development requirements.⁸ Further, YSMCS will establish a professional development committee designed, in part, to meet Pennsylvania SAS.

Staff development in the first year will also include two weeks of intensive focus on the areas outlined on page 61 of the Revised Application. Key staff will also attend training workshops on Direct Instruction, and selected staff members will develop expertise in areas of curriculum before serving as mentors and trainers of other staff. To the extent that the District's denial of YSMCS's Revised Application was based upon YSMCS's purported failure to provide professional development in the manner it specifically identified, CAB finds that YSMCS's Revised Application satisfactorily outlines a professional development program as required by Section 1719-A(13) of the CSL.

CAB similarly finds that YSMCS's Revised Application sufficiently addresses special needs students under the CSL. In *re: Vitalistic Therapeutic Center Charter School*, CAB Docket No. 2000-15, CAB found that there is no requirement for a charter school to set forth a specific plan to educate students with disabilities in its application. See also *In re: Howard Gardner Multiple Intelligence Charter School*, CAB Docket No. 2011-4. However, charter schools must comply with Federal laws and regulations governing children with disabilities, and a charter school's charter may be revoked or nonrenewed if the charter school violates any provision of Federal laws or regulations governing children with disabilities.

⁸ 24 P.S. §12-1205.2

In this case, YSMCS has exceeded the requirements of the CSL by addressing, in its Revised Application and at the hearing before the District on December 28, 2012, how it will educate students with special needs. YSMCS's Revised Application, beginning at page 56, acknowledges its intended compliance with the Disabilities Education Improvement Act of 2004; the No Child Left Behind Act; Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act; the Family Educational Rights and Privacy Act; the Gaskin Settlement Agreement; and the Pennsylvania Code. In terms of specific actions, YSMCS will employ a full-time Special Education teacher who meets all certification criteria mandated by the Pennsylvania Department of Education and a full-time English as a Second Language teacher to provide support services when needed. Students requiring additional special needs services will receive those services through contracts with appropriate service providers including, but not limited to, the McKeesport Area School District and the Allegheny Intermediate Unit. *See also*, N.T. 13. To the extent the District cites to YSMCS's failure to include a Special Education Coordinator /Teacher within the list of proposed faculty, that oversight does not negate the stated plan by the school to provide special education and does not provide a basis for denying a charter on that ground under the CSL.

For the reasons set forth above, as they pertain to curriculum development, CAB finds that YSMCS has produced substantial evidence, through both its Revised Application and the hearing testimony, of having complied with the CSL regarding 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.

F. Financial Plan

The CSL only requires that the proposed charter school submit as part of its application a financial plan and provisions which will be made for auditing the school. 24 P.S. § 17-1719-A(9). A financial plan need only show that the charter school has considered fundamental budgeting issues and has the necessary funds to operate. *In re: Roberto Clemente Elementary Charter School*, CAB Docket No. 2012-10. CAB has held that evaluating an application on the basis of financial considerations is improper. *In re: Fell Charter School*, CAB Docket No. 2001-9; *In re: Howard Gardner Multiple Intelligence Charter School*, CAB Docket No. 2011-4. Further, CAB considers the creation of financial criteria for judging a charter school application to be improper. *In re: Wonderland Charter School*, CAB Docket No. 1999-3.

In *Central Dauphin School District v. Founding Coalition of the Infinity Charter School*, 847 A.2d 195 (Pa. Cmwlth. 2004), the school district found that the financial plan proposed by the charter school was inadequate because there was no money dedicated for physical education, because teacher salaries were too low, and because the charter applicant budgeted an inadequate amount for computers and art supplies. On appeal, the Commonwealth Court concluded that the CSL does not require such specifics in a budget as long as the school board or CAB, on appeal, can determine that the applicant is capable of providing a comprehensive learning experience for students. *Id.* at 202.

In this case, Section IV of YSMCS's Revised Application entitled "Finance and Facility" identifies the charter school's projected revenue sources, budget and expenses. In terms of revenue, the Revised Application identifies Estimated State Aid as the school's basic source of revenue and articulates the manner by which Estimated State Aid is calculated. *See* Revised Application, p. 99-100. YSMCS also identifies other sources of revenue, including general-purpose aid programs, state transportation aid program, federal funds for child nutrition, federal

charter school grants, and grants and donations from local charitable foundations. *Id.* YSMCS anticipates receiving approximately \$100,000.00 from Planning and Implementation Grants through the Public Charter Schools Program and \$50,000.00 from private loans. *See Revised Application*, p. 99-100, 102. Members of the Board of Trustees will also make personal donations to fund the start-up of the school, and the school will potentially pursue financing options through bank loans.

YSMCS's Revised Application also identifies projected operational expenses, including average teacher salaries, health and dental insurance, and other similar expenses. *See, Revised Application*, p. 100. Additional details of YSMCS's 5-year operational budget are set forth in the Revised Application at Appendix "F." The Revised Budget at pages 101-103 further describes the method of accounting to be used by YSMCS, describes its payroll system, and provides the methods by which audits will be conducted and financial statements prepared.

Despite the myriad of line items contained within YSMCS's anticipated budget, the District identified, as the sole basis for its decision, what purports to be the charter school's understatement of its likely health insurance expenditures as being emblematic of other unspecified "problems" with YSMCS's budget.⁹ The District's analysis in that regard is based upon the disparity between the actual cost of the McKeesport Area School District's previous health benefits package and the cost of health insurance benefits projected by YSMCS. However, CAB finds such an analysis to be problematic to the extent that the District's calculations are based upon the aggregate cost to the District for a significantly higher number of

⁹ Although the District cites to the lack of funding commitments and YSMCS's failure to budget for a full-time Special Education Instructor as evidence of inadequate financial planning, the District's "additional comments and specific details" enclosed with its denial letter only identifies YSMCS's anticipated health insurance premiums as the basis for its denial on this ground. *See* District July 1, 2013 Denial Letter.

covered employees, and because the cost comparison also assumes comparable benefits which are unsupported by the record.

Assuming, *arguendo*, that the cost comparison used by the District can be calculated on a pro-rata basis for comparable services, prior decisions by CAB and the Commonwealth Court interpreting the CSL nevertheless establish that YSMCS has adequately described its financial plan under the CSL, and that the District's denial of the Revised Application for having inadequately provided such a plan was improper.

G. The Extent to Which the Proposed Charter School Could Serve As a Model for Other Public Schools.

A charter school applicant's showing that the school has an "innovative curriculum and school schedule" is sufficient to meet the CSL requirement that the applicant may serve as a model for other public schools. *In re: Collegium Charter School*, CAB Docket No. 1999-9; *West Chester Area School District v. Collegium Charter School*, 812 A.2d 1172, 1176 (Pa. 2002). The purpose of the CSL is "to encourage the use of innovative methods, not to exclude charter applicants whose proposed methods may not be as innovative or as different as the school district believes they should be." *Sugar Valley Rural Charter School*, CAB Docket No. 1999-4. For the reasons set forth above, CAB finds that YSMCS can serve as a model for other public schools based upon the innovative nature of its curriculum.

The District attempts to refute this conclusion on the ground that Young Scholars of Western Pennsylvania located in the Baldwin School District did not make Adequate Yearly Progress ("AYP") based upon its 2012 PSSA Data, and that that school's 2012 PSSA scores were lower than the District's scores. CAB can find no evidence in the record that Young Scholars of Western Pennsylvania operates on the same model as YSMCS. Even assuming, *arguendo*, that the District is correct, since the veracity of this assertion was not proven on the

record, the District's reliance on the test scores from a single year experienced by a different school operating under the "Young Scholars" name is misplaced. Indeed, the only testimony of record regarding the AYP of any school consists of that provided by Administrator Omer Toksoz of Young Scholars of Central Pennsylvania Charter School in State College. Mr. Toksoz testified that Young Scholars of Central Pennsylvania in State College has achieved AYP every year since opening in 2005. (N.T. 10). By 2010, Young Scholars of Central PA was ranked in the top 10-15 of charter schools in Pennsylvania. (N.T. 10-11). While the District asserts that the test scores of Young Scholars of Western Pennsylvania Charter School in Pittsburgh should be considered to the exclusion of all other schools on the basis of its geographic proximity to the District, the District has offered no rational basis for such a narrow view.

VI. CONCLUSION

For the foregoing reasons, CAB concludes that YMSCS has: (1) demonstrated sustainable support for the charter school; (2) demonstrated the capability to provide a comprehensive learning experience to students; (3) included all contents in its Application as required by section 1719-A of the Charter School Law and conformed with the intent of the General Assembly; and 4) established that it can serve as a model for other public schools in accordance with the law. Therefore, we make the following:

