

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

<b>Joan Myers Brown Academy:</b>	:	
<b>A String Theory Charter School,</b>	:	
<b>Petitioner</b>	:	
	:	
v.	:	<b>CAB Docket No. 2022-02</b>
	:	
<b>School District of Philadelphia,</b>	:	
<b>Respondent</b>	:	

**OPINION**

This matter comes before the Pennsylvania State Charter School Appeal Board (“CAB”) on appeal by Joan Myers Brown Academy: A String Theory Charter School (“Charter School”) in accordance with the Charter School Law<sup>1</sup> (“CSL”). The Charter School appeals from the decision issued February 27, 2020, by the School District of Philadelphia (“School District”) which rejected and denied the Charter School’s application for a charter. For the reasons stated below, the decision of the School District is affirmed, and the appeal is dismissed.

**FINDINGS OF FACT**

**Procedural History**

1. On November 15, 2019, the School District received the Charter School’s application for a charter. (Doc. No.<sup>2</sup> 0001).
2. The School District held public hearings on the application on December 20, 2019, and January 22, 2020. (Doc. Nos. 0010, 0011).
3. On February 27, 2020, the School District denied the application and subsequently

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

<sup>2</sup> Unless otherwise noted, “Doc. No.” refers to the document number designated in the School District’s certification of the record.

issued a written decision outlining its reasons for denying the application. (Doc. No. 0013).

4. The School District first concluded that the Charter School had not established that it has properly planned to provide comprehensive learning experiences to students pursuant to the charter, as required by section 1717-A(e)(2)(ii) of the CSL. The School District first found that the Charter School would not be an independent, nonprofit corporation, because its management company, String Theory Schools, and numerous other related entities are also represented by the same law firm (paid for by the Charter School), the various clients have not signed waiver of potential conflicts of interest, and the law firm incorporated the Charter School and has authority to appoint the initial trustees. The School District found that the Charter School had not taken sufficient steps to provide evidence of planned instruction that meets and is aligned with all the Pennsylvania Standards in every subject area and grade to be offered in year 1 of the charter. The School District also found that the budget submitted by the Charter School did not sufficiently address health care costs and insurance as well as retirement. The School District further found that the Charter School did not provide lease arrangements, such as proposed rent and utility costs or indicate who would be responsible for renovations or maintenance for its proposed rented facility. The School District concluded that without this information, it could not evaluate the sufficiency of the Charter School's budgetary planning. (Doc. No. 0013 at 23-30).

5. The School District further concluded that the Charter School's application did not consider all of the information required under section 1719-A of the CSL. As discussed above, these include the proposed governance structure, curriculum, and methods of assessing whether students are meeting educational goals, and financial plan. The School District found that the Charter School's procedures regarding suspension of students do not comply with state law in that they that require a meeting with the student's parent or guardian prior to readmission, in addition

to the principal or other person in charge of the building, permit unknown others to issue suspensions, and prohibit referral for expulsion of students in K-5 who commit weapons offenses, and further do not provide clear consequences for various types of offenses, including alternative placements or reflect the Restorative Practices model. The School District also found that the application did not include any confirmation from the owner or landlord of the proposed facility as to what the lease arrangements would be and whether the owner would pay for renovations represented that the Charter School would make to the proposed location. (Doc. No. 0013 at 31-32).

6. With all these deficiencies, the School District also concluded that the Charter School did not yet have the capacity to serve as a model for other public schools in Pennsylvania, as required by section 1717-A(e)(2)(iv) of the CSL. The School District concluded that it would not be appropriate to approve another charter school to be operated by String Theory Schools, the educational management organization that contracted with the Charter School. (Doc. No. 0013 at 32-33).

7. On February 24, 2022, the Charter School filed an appeal with CAB. (Docket entry).

8. On March 18, 2022, the School District filed an answer to the petition of appeal. (Docket entry).

9. In accordance with the briefing schedule issued by the assigned hearing examiner, the Charter School filed its principal brief on June 22, 2022, the School District filed its brief on July 22, 2022, and the Charter School filed its reply brief on August 5, 2022. (Docket entries).

10. On October 18, 2022, the Board<sup>3</sup> heard argument from the parties on the instant

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<sup>3</sup> As members of the Board at that time, chair Stacey Marten, Vice-chair Jodi Schwartz, Jennifer C. Faustman, and former Acting Secretary of Education Eric Hagarty were in attendance.

appeal.

11. On January 20, 2023, the School District filed a motion to supplement the record with information showing that the facility planned by the Charter School was no longer available, along with a supporting brief; on January 23, 2023, the Charter School filed its objections; on January 25, 2025, the School District filed a reply; and on January 30, 2023, the Charter School filed a sur-reply. (Docket entries).

12. On February 20, 2023, the Charter School filed a motion to supplement the record with information showing it was pursuing an alternative facility; on March 13, 2023, the School District filed an answer with supporting brief. (Docket entries).

13. At its meeting on April 11, 2023, the Board<sup>4</sup> heard argument on the motions to supplement the record and voted to grant both motions.

14. At its meeting on April 11, 2023, after granting the motions to supplement the record the Board heard additional argument on the appeal based upon the supplementation and voted<sup>5</sup> to deny the instant appeal.

### **General Information**

15. The Charter School seeks a five-year charter to open in the 2020-21 school year. (Doc. No. 0001 at 1).

16. The Charter School plans to open in year 1 with Kindergarten through grade 5 with 600 students. Thereafter, the Charter School would add one grade and 100 additional students per year. By year 4, the Charter School would offer K-8 with 900 students and remain at that

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<sup>4</sup> Chair Martin, Vice-chair Schwartz, and Board members Ms. Faustman, Mr. Killion, and Acting Secretary of Education Dr. Khalid Mumin attended the meeting.

<sup>5</sup> Chair Marten, Vice-chair Schwartz, and Ms. Faustman voted to deny the appeal; Mr. Killion voted to grant the appeal; and Acting Sec. Mumin abstained.

enrollment and grade structure. (Doc. No. 0001 at 1).

### **Facility**

17. The Charter School was originally proposed to be located at 3905 Ford Road, Philadelphia, PA 19131 in the Wynnefield Heights section of west Philadelphia. (Doc. No. 0001 at 2, 57, 59).

18. Subsequent to the School District's denial of the charter application, the property at 3905 Ford Road was transferred to another and is being remodeled for use as a drug rehabilitation center and is no longer available to the Charter School. (School District motion to supplement the record, ¶¶ 2, 19-21).

19. On February 20, 2023, the Charter School obtained a fully executed letter of intent to develop 111 North 49<sup>th</sup> Street, Philadelphia, PA 19139 for use as a 900-student charter; it is zoned SP-INS, Institutional with a lot size of 765,502 square feet and is suitable for the development of a school. (Charter School motion to supplement the record, ¶¶ 1-2).

### **Governance structure**

20. String Theory Schools ("STS") will be the educational management organization ("EMO") contracted with the Charter School. (Doc. No. 0001 at 31).

21. The pending application is the third application filed with the School District for Joan Myers Brown Academy. (Doc. No. 0011 at 38).

22. STS currently operates two brick and mortar charter schools in Philadelphia: Philadelphia Performing Arts Charter School ("PPA"), which serves K-grade 12, and The Philadelphia Charter School for Arts and Sciences at H.R. Edmunds ("Arts and Sciences"), which serves K-grade 8. (Doc. No. 0001 at 60-61).

23. STS voluntarily applied for and became the EMO for Arts and Sciences under a

charter issued to the non-profit board of trustees for Arts and Sciences with a term beginning in the 2012-2013 school year. (Doc. No. 0001 at 2580).

24. Three of the proposed members of the Charter School's board of trustees ("Board of Trustees") currently serve on the governing boards of PPA and Arts and Sciences – Javier Kuehnle, Ron Pigliacelli and Evelt Vertil. (Doc. No. 0001 at 123-24, Doc. No. 0011 at 59, 65).

25. According to the Charter School's Bylaws, trustees can be removed by a two-thirds vote of all trustees, either with or without cause. (Doc. No. 0001 at 145).

26. According to the Articles of Incorporation filed for the Charter School, the incorporator is David Annecharico, Esquire, an attorney employed by the law firm of Sand & Saidel, PC. (Doc. No. 0001 at 113-14).

27. The application contains a letter dated November 5, 2019, from Daniel H. Saidel, Esquire, of The Law Offices of Sand & Saidel, PC, addressed as follows:

Board of Trustees:  
Joan Myers Brown Academy: A String Theory Charter School  
Joan Myers Brown Academy Foundation  
String Theory Schools  
String Theory Learning  
Particle Learning

(Doc. No. 0001 at 186).

28. The November 5, 2019, letter states in pertinent part:

This will confirm our discussion and understandings regarding this firm's representation of Joan Myers Brown Academy: A String Theory Charter School ("JMBA"), Joan Myers Brown Academy Foundation (the "Foundation"), String Theory Learning ("STL"), Particle Learning ("PL"), and also of String Theory Schools ("STS") with whom JMBA has entered into an Academic Services Agreement.

As we discussed, we currently co-represent JMBA, the Foundation, STL, PL, and STS as general counsel. We are obligated to disclose potentially existing and future conflicts and request your waiver of such potentially existing and future conflicts.

A joint request that we undertake the representation of JMBA, the Foundation, STL, PL, and STS creates a potential conflict of interest for this firm. We are required by the Rules of Professional Conduct to disclose the conflict to you and obtain your waiver of it. We have agreed to represent JMBA, the Foundation, STL, PL, and STS based upon the understanding that JMBA, the Foundation, STL, and STS must agree to waive any potential conflict of interest created by our joint representation.

We advised you that, at least technically, a conflict of interest exists between all organizations. For example, JMBA could assert a claim against STS under the Academic Services Agreement between JMBA and STS, alleging breach of contract. The Foundation is a supporting organization of JMBA which may own and lease certain property to JMBA. A potential conflict of interest exists between the Foundation and JMBA insofar as potential disputes may arise under their existing lease agreements. Although STS, the Foundation, and JMBA have advised us that neither entity has the intention of taking such a position, and our investigation has revealed no basis for such an assertion, we must advise you of the potential conflict and the possibility that such a claim could be asserted.

We are not aware of any actual or reasonably foreseeable adverse consequences of such conflicts of interest.

Although the interests of JMBA, the Foundation, STL, PL, and STS are generally consistent, it is recognized and understood that differences may exist or become evident during the course of our representation. Notwithstanding these possibilities, JMBA, the Foundation, STL, PL, and STS have determined that it is in their individual and mutual interests to have a single law firm represent them jointly in connection with general legal counsel.

This will also confirm that JMBA, the Foundation, STL, PL, and STS have each agreed to waive any current and future conflict of interest arising out of, and that you will not object to, our representation of each other in accordance with the legal services agreement for general legal services previously executed by JMBA and Sand & Sidel, PC and by STS and Sand & Sidel, PC.

It is further understood and agreed that we may freely convey necessary information provided to us by one client to the other, and that there will be no secrets as between JMBA, the Foundation, STL, PL, and STS unless all of you expressly agree to the contrary.

As we further discussed, in the event of any litigation between you related to our role as General Counsel, we will be prohibited from representing any party.

With respect to the payment of fees, we have agreed that our fee agreement will remain unchanged. Bills will continue to be submitted to JMBA and JMBA will remain responsible for payment. Any arrangement as to the allocation of the bills between JMBA, the Foundation, STL, PL, and STS will be handled privately.

As you know, Sand & Sidel, PC represents different clients with diverse interests. Many of our clients compete with one another and do business with one another. We are precluded by the Rules of Professional Conduct and Code of Professional Responsibility, however, from representing a client in a matter in which the client's interests are averse to the interests of another client of the firm, absent the written consent of both clients. In the future, we may be asked to represent another client in a transaction or dispute adverse to you, where that transaction or dispute is unrelated to the matter involved in our representation of you. For that circumstance, we ask that you give us advance consent at this time to any such representation and that you waive any conflicts that such a representation would present.

If the terms set forth above are acceptable to you, we ask that you sign below where indicated. We will return an original fully executed copy of this letter, to you, for your records.

(Doc. No. 0001 at 186-88) (emphasis in original).

29. Not a single representative from any of the entities receiving Mr. Sidel's letter signed the November 5, 2019, letter. (Doc. No. 0001 at 188).

30. None of the boards of the entities referenced in the letter have approved or signed the letter. (Doc. No. 0011 at 76).

31. Mr. Annecharico did not know if any of the entities were receiving separate legal counsel or advice regarding whether they should sign the letter. He noted that one of the proposed board members from the Charter School is an attorney who would give advice in her capacity as a board member. (Doc. No. 0011 at 76-77).

32. The reference to Joan Myers Brown Academy Foundation in the letter is the only time that such an entity is referenced in the application. (*See*, Doc. No. 0001).

33. The Foundation would be a supporting organization to the Charter School and might purchase or manage property and could serve as a fund-raising entity on behalf of the Charter School. (Doc. No. 0011 at 77-78).

34. No agreement is in place between the Charter School and the Foundation. (Doc.



No. 0011 at 79).

35. The Charter School and STS expect to enter into a curriculum license and support agreement (“Support Agreement”) to govern the terms of STS’s management and support of the Charter School and the provision of STS’s curriculum framework, instruction, materials, resources, etc. to the Charter School. (Doc. No. 0001 at 167-88).

36. The Support Agreement provides for management fees to be paid by the Charter School to STS in the amount of \$600,000 in Year 1, \$721,000 in Year 2, \$848,720 in Year 3, \$983,454 in Year 4, and \$1,012,958 in Year 5 of the Charter. (Doc. No. 0001 at 178).

37. The Support Agreement contains, inter alia, various performance obligations by the Charter School; termination for cause provisions and indemnification responsibilities that would affect the operations of the Charter School; and the obligations that the Charter School would have in the event performance issues and disagreements arose between the Charter School and STS. (Doc. No. 0001 at 174-75, 180-82).

38. STS proposes to provide a revolving line of credit to the Charter School in the amount of up to \$1 million, with interest being charged. (Doc. No. 0001 at 145).

### **Curriculum and educational programming**

39. The Charter School is dedicated to “Growing the Next Generation of Current Leaders,” inspired by the life and work of Joan Myers Brown, the visionary founder of PHILADANCO! (Doc. No. 0001 at 3).

40. The Charter School is a replication of the contemporary dance curriculum in use at PPA for the last two years. (Doc. No. 0011 at 39-40).

41. The core subject area curriculum submitted in the application is the same curriculum in place at PPA and at Arts and Sciences, except for English Language Arts (“ELA”).

For ELA, PPA and Arts and Sciences are currently migrating from the Reading Wonders curriculum to the K-8 Wit and Wisdom curriculum that is proposed in the application. (Doc. No. 0011 at 42-44)

42. At the Charter School, students in Kindergarten through Grade 5 in Year 1 will participate in weekly creative and performing arts and science enrichment classes, with one hour per week dedicated to each of the following subjects: “Innovations in Science and Technology,” which is in addition to the core science programming, classical ballet and contemporary dance, visual arts, instrumental music, vocal music, and French. (Doc. No. 0001 at 9).

43. The Charter School’s proposed curriculum is not aligned with State standards as follows:

a. Health and Physical education, K-2 and 3-5, does not address the Healthful Living standard, CC.10.2.3.A-E.

b. Health and Physical education, 3-5, does not address the Physical Activity standard, CC.10.4.3.E.

c. Environment and Ecology, grades 3-8 curriculum, does not address the standards for Agriculture and Community (4.4) and Humans and the Environment (4.5), in the required grade levels.

d. Science instruction in grades 3, 4 and 5 does not reflect all of the applicable technology and engineering standards.

e. Social studies curriculum in K-2 does not reflect standards that are fully aligned to the civics and government, economics, geography and history requirements in those grade levels. The standards listed for K-2 are the 3<sup>rd</sup> grade standards.

f. Third grade Social Studies documents do not reflect alignment with all of the grade 3 social studies standards, including CC.6.2.3C, F and G; CC.6.3.3.C; CC.6.4.3A; and CC.6.5.3H.

g. Career Education standards for grades 3, 5 and 8 are not reflected in the programming materials submitted.

h. Family and consumer science standards for grades 3 and 6 are not evident in the social studies curriculum, science or any other subject.

i. Certain grade-level standards are assessed in other grades, which is inconsistent with the Pennsylvania grade-level standards requirements.

(See, Doc. No. 0004 at 1-4).

#### **Financial planning and services**

44. The Charter School proposes to implement a Multi-Tier System of Supports (“MTSS”) to support students who are not making adequate progress. The MTSS plan lacks the necessary components and explanation to ensure that students who are not making the expected progress receive necessary supports and interventions. (Doc. No. 0002 at 5-6).

#### **Model for other public schools**

45. In the last four years, the Annual Charter Evaluation (“ACE”) reports and the Renewal Recommendation Report 2018-2019 (“RRR”) for PPA, found PPA out of compliance with 16 out of 106 compliance items, including in the areas of Individualized Education Program (“IEP”) progress monitoring, EL timely evaluations, English as a Second Language (“ESL”) access, food safety, and emergency preparedness. (Doc. No. 0001 at 2654-2758).

46. Through the 2017-2018 school year, PPA had mixed results in academic achievement of its students, as noted in the RRR. (Doc. No. 0001 at 2718-2724).

47. For 2017 and 2018, the ACE reports for Arts and Sciences found Arts and Sciences out of compliance with 7 out of 51 compliance items, including in the areas of ELs; food, health and safety; and student discipline. (Doc. No. 0001 at 2560-600).

48. For 2018, only 36% of Arts and Sciences' students were proficient on PSSA science; 28% in PSSA ELA; and 10% in PSSA math. (Doc. No. 0001 at 2585-87).

49. PPA's Overall K-8 School Progress Report ("SPR") score rose from a 67% in 2016-2017 to a 68% in 2017-2018; however, in the category of Achievement, PPA earned a 49% in the Performance Tier of Watch. (Doc. No. 0009 at 1-6).

50. Arts and Sciences' 2017-2018 K-8 SPR score rose from 34% in 2016-2017 to 50% in 2017-2018, which is lower than its SPR score in the 2015-2016 school year of 59%; however, in the category of Achievement, Arts and Sciences earned a 12% in the Performance Tier of Intervene. (Doc. No. 0009 at 9-12).

51. Arts and Sciences' students' PSSA achievement in ELA, math and science in grades 3-8 all declined from the prior school year; its students overall did not meet the Pennsylvania growth standard in ELA, math or science; only 27.7% of ELs met the English Language Growth and Attainment measure, which is below the statewide average; and the regular attendance performance standard was not met and fell below the statewide standard. (Doc. No. 0009 at 13-21).

52. Arts and Sciences' 2018-2019 SPR score dropped from a score of 50% in 2017-2018 to a score of 24% in 2018-2019, placing the charter school in the Intervene category overall, largely resulting from a failure to improve achievement but a significant decrease in growth on standardized assessments. (Doc. No. 0009 at 28-33).

53. Similarly, PPA's 2018-2019 SPR score for K-8 decreased from 68% in 2017-

2018 to 44% in 2018-2019, resulting from a substantial decline in growth on standardized assessments. (Doc. No. 0009 at 22-27).

### **Due Process**

54. The parties have received notice and the opportunity to respond to all documents and proceedings since the filing of the administrative appeal. (Docket entries).

### **CONCLUSIONS OF LAW**

1. The CAB has jurisdiction over the instant appeal. Findings of Fact Nos. 1-  ; Section 1717-A(f) and (i)(1) of the CSL, 24 P.S. § 17-1717-A(f) and (i)(1).

2. The CAB has the authority under the CSL to agree or disagree with the findings of the School District based upon the CAB’s review of the certified record. Section 1717-A(i)(6) of the CSL, 24 P.S. § 17-1717-A(i)(6).

3. The CAB is statutorily required to conduct its review “on the record as certified by the local board of directors.” Section 1717-A(i)(6) of the CSL, 24 P.S. § 17-1717-A(i)(6).

4. The CSL mandates that “[a] charter school application submitted under the [CSL] shall be evaluated by the local board of school directors based on criteria, including, but limited to,” the following:

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

Section 1717-A(e)(2) of the CSL, 24 P.S. § 17-1717-A(e)(2).

5. The Charter School has not demonstrated that it would be an independent non-profit corporation controlled by an independent board of trustees who retain ultimate authority over the general operation of the school. Findings of Fact Nos. 1 – 16, 20 – 38.

6. The Charter School has not demonstrated the capability to provide comprehensive learning experiences to its students, because its curriculum is not sufficiently aligned with State standards. Findings of Fact Nos. 1 – 16, 39 – 44.

7. The Charter School would not serve as a model for other public schools. Findings of Fact Nos. 1 – 16, 22 – 23, 45 – 53.

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

## DISCUSSION

### I. STANDARD OF REVIEW

In reviewing a decision to deny a charter application, the CAB applies a *de novo* standard of review. *West Chester Area S.D. v. Collegium Charter School*, 812 A.2d 1172, 1177 (Pa. 2002).

Further, the CSL provides:

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

24 P.S. § 17-1717-A(i)(6). As such, the CAB is empowered to “determine the weight of the evidence behind each finding and draw its own conclusions.” *In re Hills Acad. Charter School*, (No. CAB 1999-12). 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. *West Chester Area S.D.*, 812 A.2d at 1179, n. 9.

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

- (1) Improve pupil learning.
- (2) Increase learning opportunities for all pupils.
- (3) Encourage the use of different and innovative teaching methods.
- (4) Create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site.
- (5) Provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system.
- (6) Hold the schools established under this act accountable for meeting measurable academic standards and provide the school with a method to establish accountability systems.

24 P.S. § 17-1702-A.

The CSL mandates that “[a] charter school application submitted under the [CSL] shall be

evaluated by the local board of school directors based on criteria, including, but not limited to,”  
the following:

- (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...;
- (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 § 1719-A and conforms to the legislative intent outlined in § 1702-A; and,
- (iv) The extent to which the charter school may serve as a model for other public schools.

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

- (1) The identification of the charter applicant.
- (2) The name of the proposed charter school.
- (3) The grade or age levels served by the school.
- (4) The proposed governance structure of the charter school, including a description and method for the appointment or election of members of the board of trustees.
- (5) The mission and education goals of the charter school, the curriculum to be offered and the methods of assessing whether students are meeting educational goals.
- (6) The admission policy and criteria for evaluating the admission of students which shall comply with the requirements of § 1723-A.
- (7) Procedures which will be used regarding the suspension or expulsion of pupils. Said procedures shall comply with § 1318.
- (8) Information on the manner in which community groups will be involved in the charter school planning process.
- (9) The financial plan for the charter school and the provisions which will be made for auditing the school under §v437 of the CSL.
- (10) Procedures which shall be established to review complaints of parents regarding the operation of the school.



- (11) A description of and address of the physical facility in which the charter school will be located and the ownership thereof and any lease arrangements.
- (12) Information on the proposed school calendar for the charter school, including the length of the school day and school year consistent with the provisions of § 1502.
- (13) The proposed faculty and a professional development plan for the faculty of a charter school.
- (14) Whether any agreements have been entered into or plans developed with the local school district regarding participation of the charter school students in extracurricular activities within the school district. Notwithstanding any provision to the contrary, no school district of residence shall prohibit a student of a charter school from participating in any extracurricular activity of that school district of residence: Provided, That the student is able to fulfill all of the requirements of participation in such activity and the charter school does not provide the same extracurricular activity.
- (15) A report of criminal history record, pursuant to § 111, for all individuals who shall have direct contact with students.
- (16) An official clearance statement regarding child injury or abuse from the Department of Public Welfare as required by 23 Pa.C.S. Ch. 63 Subch. C.2 (relating to background checks for employment in schools) for all individuals who shall have direct contact with students.
- (17) How the charter school will provide adequate liability and other appropriate insurance for the charter school, its employes and the board of trustees of the charter school.

24 P.S. § 17-1719-A.

## **II. BURDEN OF PROOF**

The degree of proof required to establish a case before an administrative tribunal in an action of this nature is preponderance of the evidence. *Kirkpatrick v. Bur. of Professional and Occupational Affairs, State Bd. of Barber Examiners*, 117 A.3d 1286, 1288 n.7 (Pa. Cmwlth. 2015). Preponderance of the evidence is the least rigorous evidentiary standard. *Helwig v. Com., Dept. of Trans., Bur. of Driver Licensing*, 99 A.3d 153, 158 (Pa. Cmwlth. 2014). “A preponderance of the evidence is ‘such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.’” *Department of Trans. v. Agric. Lands*

*Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Cmwlth. 2010) (quoting *Sigafoos v. Pa. Bd. of Probation and Parole*, 503 A.2d 1076, 1079 (Pa. Cmwlth. 1986)). In other words, it is a “more likely than not” standard. *Commonwealth v. \$6,425.00 Seized from Esquilin*, 880 A.2d 523, 552 (Pa. 2005). Accordingly, the record in this matter is reviewed to determine if the evidence that the Charter School produced at the district level meets its burden of proving that the application satisfies the requirements enumerated in the CSL at 24 P.S. § 17-1717-A(e)(2), warranting the grant of a charter.

### **III. SUPPLEMENTATION OF THE RECORD**

The CAB is required to review the school district’s decision on the record certified to it but may allow the parties to supplement the record if the supplemental information was previously unavailable. Section 1717-A(i)(6) of the CSL, 24 P.S. § 17-1717-A(i)(6). “Unavailable” evidence is “not accessible, unknown, or not discernible with due diligence” and may not include “information that could have been discovered before the record was closed” before the school board. *Pocono Mountain Charter School, Inc. v. Pocono Mountain School District*, 88 A.3d 275, 291 (Pa. Cmwlth. 2014). Additionally, the proposed supplemental information must be relevant and probative to CAB’s review. *In re: Phoenix Charter School*, slip op. at 9 (Pa. Charter School Appeal Bd., no. 2001-06, filed March 22, 2002), citing, *Shenango Valley Regional Charter School v. Hermitage School District*, 756 A.2d 1191 (Pa. Cmwlth. 2000) (holding that board did not err by refusing to admit evidence that was neither relevant nor probative).

In its motion to supplement the record, the School District sought to introduce into the record evidence showing that the Charter School’s planned facility had been sold or transferred to a new owner or that the facility was otherwise no longer available for the Charter School’s use. The School District asserted that the property had been sold in May 2020 and that it discovered

this information on January 5, 2023. The Charter School does not dispute that the facility had been sold; it merely argues that the School District should have discovered this sooner through the exercise of due diligence and should have realized it would be likely for the facility to be no longer available more than two years after the School District had denied the charter application. Because this sale occurred months after the School District's adjudication, it could not have been discovered before the record closed. As disclosed below, a charter school's planned facility is highly relevant to its application for a charter. The information with which the School District sought to supplement the record was relevant and probative to this matter. The Board properly granted the School District's motion to supplement the record.

In its motion to supplement the record, the Charter School sought to include information about its fully executed February 20, 2023, letter of intent to develop a property for use as the charter school facility. For similar reasons, this information was also unavailable before the record closed before the School District and is relevant and probative to this matter. Moreover, the Board would have erred had it not heard this evidence. *See, Montour School Dist. v. Propel Charter School-Montour*, 889 A.2d 682, 689-90 (Pa. Cmwlth. 2006) (given its authority to conduct a *de novo* review, State Charter School Appeal Board erroneously failed to hear charter school applicant's evidence concerning the new proposed site when it sustained the school district's objections, and it could not then order the district to grant the charter in the absence of any evidence of a proposed site for the school). The Board properly granted the Charter School's motion to supplement the record.

#### **IV. MERITS**

##### **A. Facility – section 1719-A(11)**

The CSL requires that an application for a charter must be evaluated on criteria including,

among other things, 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. Section 1717-A(e)(2)(iii) of the CSL, 24 P.S. § 17-1717-A(e)(2)(iii). An application must include “a description of and address of the physical facility in which the charter school will be located and the ownership thereof and any lease arrangements.” Section 1719-A(11) of the CSL, 24 P.S. § 17-1719-A(11). There is no requirement that the facility be under a contractual obligation before the charter is granted. *Brackbill v. Ron Brown Charter School*, 777 A.2d 131, 139 (Pa. Cmwlth. 2001).

The Charter School has presented a letter of intent for proposed development of a property at 111 North 49<sup>th</sup> Street in Philadelphia that is zoned SP-INS Institutional with a lot size of 765,502 square feet and is suitable for development of a school contemplated for 900 students. However, the letter of intent was produced only after the School District raised the issue of the Charter School’s first proposed location being unavailable. Additionally, despite having the opportunity to address any concerns this Board might have regarding the suitability of 111 North 49<sup>th</sup> Street, the Charter School has elected to limit that supplementation to a letter of intent instead of presenting additional evidence regarding the suitability of the proposed location.

**B. Governance structure – section 1719-A(4)**

The CSL requires that an application for a charter must be evaluated on criteria including, among other things, 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. Section 1717-A(e)(2)(iii) of the CSL, 24 P.S. § 17-1717-A(e)(2)(iii). An application must include “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.” Section 1719-A(4) of the CSL, 24 P.S. § 17-1719-A(4). A charter school must be an independent non-profit corporation controlled by an

independent board of trustees who retain ultimate authority over the general operation of the school; its operations may not be controlled by a management company, such as having the power to bind or legally operate the charter school or any other role or relationship with the charter school that substantially limits the charter school's ability to exercise its rights. *West Chester Area School Dist. v. Collegium Charter School*, 812 A.2d 1172, 1185 (Pa. 2002). While a charter school may make contracts and leases for the procurement of services, equipment and supplies, the charter school must retain the ultimate control over its operations. *Id.*

The School District found that the Charter School would not be an independent, nonprofit corporation, because its management company String Theory Schools and numerous other related entities are also represented by the same law firm (paid for by the Charter School), the various clients have not signed waiver of potential conflicts of interest, and the law firm incorporated the Charter School and has authority to appoint the initial trustees. CAB agrees.

The legal counsel retained by the Charter School, STS, and numerous other related entities, suggests that the same counsel could be utilized to represent the totality of those parties, even though conflicts would exist relative to the negotiation of the Support Agreement for EMO services, the \$1 million line of credit that STS would be providing to the Charter School, and the ongoing relationship among the various and related parties if a charter were granted. The same legal counsel that represents STS is the incorporator of the Charter School. In addition to the EMO and line of credit, the Charter School has raised the possibility that the Foundation may own the property that the Charter School would utilize, with the same legal counsel representing that entity as well, and no other information is available or has been disclosed about who would operate the Foundation. None of these relationships or potential relationships appear to have been negotiated or contemplated at arm's length.

The application includes the letter from Sand & Saidel seeking waiver of these conflicts and potential conflicts. The letter is not signed by any client and has not been approved by any client. There is no indication that separate legal counsel has been retained by any party to advise on the terms and conditions of the transactions contemplated related to the Charter School's operation. Just because one of the proposed members of the Charter Board of Trustees may be an attorney, there is no indication that such an individual has been retained to provide legal services to the Charter School. In fact, all information suggests that Sand & Saidel continues to represent the Charter School in connection with matters involving conflicted parties.

The Sand & Saidel letter also indicates that the Charter School would be paying the legal fees of all six entities listed in the letter, including STS's legal fees. No explanation is provided for why a public charter school would be paying the EMO's legal fees, the Foundation's legal fees or the legal fees of other entities (STL and PL) who supposedly will have no role in the operation of the Charter School. (Doc. No. 0011 at 84-85).

The Charter School's failure to procure independent legal counsel raises an independence concern. Under the current CSL structure, arms-length transactions must occur between management companies and charter schools. As noted by Commonwealth Court, "[u]nder the CSL and *Collegium*, management agreements must be products of arms-length negotiations between separate and independent entities." *Insight PA Cyber Charter School v. Pennsylvania Dept. of Education*, 162 A.3d 591, 598 (Pa. Cmwlth. 2017). The applicant has represented that there will not be overlap between the trustees of the Charter Board of Trustees and the board governing STS. However, if both the Charter School and STS are represented by the same legal counsel, leaving aside the conflict issues that arise under the Rules of Professional Responsibility, the negotiations and transactions between the two parties cannot be considered arms-length. The

Support Agreement contains terms with significant legal ramifications in the event that the relationship with the Charter School and STS might sour, including performance obligations, termination provisions with resulting financial and programming implications, and indemnification provisions. Further the \$1 million line of credit results in a significant liability and lending circumstances between those same parties. Both entities should have independent legal counsel to fully understand the terms of the management relationship and the implications of such arrangements.

Sand & Saidel is also the incorporator of the Charter School, which means that it has the power to appoint the initial trustees. The Bylaws permit trustees to be removed without cause by a two-thirds vote. Such a provision raises additional concerns about the independence of trustees, if they can be removed for any reason, including making decisions that are unpopular to the majority. Such a removal provision, without cause, could discourage Charter Board of Trustee members from acting independently or from voting against the simple majority to avoid removal. This is concerning, particularly given that the other STS-managed charter schools have some of the same board members as proposed for the Charter School and given the other conflict issues addressed.

If the Foundation would have an ownership role in the Charter School's facility, that role would also raise significant contractual issues, which have not been properly addressed by the applicant. No information was provided about whether the property should be purchased or leased; Similarly, no information was provided about whether the replacement facility should be purchased or leased. This raises concerns about the role that the Foundation might have. If leased, the material lease arrangements have not yet been determined. Further, the Foundation is likely to require bond or bank financing to acquire the building, and such financing may involve financial

obligations on the Charter School. In the three years since the School District denied its application for a charter on these grounds, the Charter School has not supplemented the record to demonstrate alleviation of any of these concerns.

The governance structure for the Charter School is not adequate to meet the requirements of the CSL. The Board concludes that this deficiency on its own is sufficient grounds to deny the charter application.

**C. Curriculum and educational programming – section 1719-A(5)**

The CSL requires an application to demonstrate 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.” 24 P.S. § 17-1717-A(e)(2)(ii). “In order to provide a comprehensive learning experience to students, a charter applicant must demonstrate adequate support and planning in the charter application.” *Duquesne Charter Sch.*, No. CAB 2013-01. An applicant is obligated to provide at least “a roadmap to the school’s operation, goals, teaching strategies and learning methodology,” but may not rely upon mere “general pronouncements.” *Bensalem Keystone Acad. Charter Sch.*, No. CAB 2012-14. To pass muster, a curriculum must be met and be aligned with the state standards. *Spartanburg Cmty. Charter Sch.*, No. CAB 2016-02. An applicant must also explain how “the nontraditional elements of the [c]harter [s]chool will be integrated into the curriculum.” *Cmty. Serv. Leadership Dev. Charter Sch.*, No. CAB 2010-02.

The School District found that the Charter School had not taken sufficient steps to provide evidence of planned instruction that meets and is aligned with all the Pennsylvania Standards in every subject area and grade to be offered in year 1 of the charter. The School District also found that the budget submitted by the Charter School did not sufficiently address health care costs and insurance as well as retirement. The School District further found that the Charter School did not



provide lease arrangements, such as proposed rent and utility costs or indicate who would be responsible for renovations or maintenance for its proposed rented facility. The School District concluded that without this information it could not evaluate the sufficiently of the Charter School's budgetary planning.

CAB agrees with the School District. Its findings highlight serious deficiencies in the Charter School's curricular materials. Despite bearing the burden of proof and having these deficiencies pointed out by the School District during multiple phases of the application process, the Charter School has declined to present any specific rebuttal, instead relying on generalities.

The proposed curriculum for the Charter School is not adequate to offer comprehensive learning experiences to its students as required by the CSL. The Board concludes that this deficiency on its own is sufficient ground to deny the charter application.

The proposed curriculum for a charter school must, inter alia, show how the applicant will offer comprehensive planned instruction to fulfill Chapter 4 requirements, how the particular subject area will meet Pennsylvania standards; and how the applicant will deliver special education services to students with disabilities. *Bear Creek Community Charter School*, CAB No. 2003-3. This is required in order to show how the proposed charter school will offer comprehensive learning experiences to its students as required under Section 1717-A(e)(2)(ii) of the CSL.

The Board has previously stated:

The curriculum of a school, any school, is one of the most significant building blocks of the education program at that institution. To not have the curriculum completed and fully aligned shows a lack of adequate planning.

*Thomas Paine Charter School*, CAB No. 2009-04, at 9. It is the Policy of the State Board of Education that the local curriculum be designed by school entities to achieve the academic standards under § 4.12 (relating to academic standards) and any academic standards as determined

by the school entity. 22 Pa. Code § 4.4(a). A curriculum is defined by the State Board of Education as, “[a] series of planned instruction aligned with the academic standards in each subject area that is coordinated and articulated and implemented in a manner designed to result in the achievement at the proficient level by all students.” 22 Pa. Code § 4.3 (relating to definitions). Planned instruction is defined as, “[i]nstruction offered by a school entity based upon a written plan to enable students to achieve the academic standards under § 4.12 ... and any additional academic standards as determined by the school entity.” *Id.*

A charter school application must establish a program that is fully aligned with Pennsylvania standards. *Spartansburg Community Charter School v. Corry Area School District*, slip op. at 35-37 (CAB, no. 2016-02, filed Jan. 5, 2017) (lack of alignment to standards indicates that charter school has failed to establish its capability, in terms of planning, to provide comprehensive learning experiences to its students). A charter school’s complete curriculum plan must be submitted to determine if the proposed charter school could be a model for other public schools. *Duquesne Charter School*, CAB No. 2013-01, at 9 (citing *In re: Environmental Charter School*, CAB No. 1999-14, at 21). An applicant would not be a model for other public schools if the curriculum submitted was not fully developed. *Id.* at 12. To meet the definition of “curriculum” in the State Board of Education Regulations, the curricular documents submitted must include the indicators of planned instruction set forth in the regulations, including resources and assessments that will be utilized in each subject area. *Spartansburg Community Charter School v. Corry Area School Dist.*, CAB Docket No. 2016-02, at 33. The documents must establish a program that is fully aligned with the Pennsylvania standards; if PA Core Standards for the appropriate grade levels are missing, or if the curricular documents cite to standards in use in other states or academic standards that do not exist in Pennsylvania, the curricular documents are

not fully aligned. *Id.*, at 35-37. The curricular documents submitted must also give an idea of “how the teacher of the course is to lead the students through the course or gauge whether students understand the concepts and have attained the competencies at the heart of the course.” *Id.*, at 33. The resources and materials to be used in each course must be age-appropriate for the grades to be served by the charter school. *Id.*, at 33-35. Failure to use age-appropriate material creates barriers to learning. *Id.*, at 35.

Here, the Charter School has not taken sufficient steps to provide evidence of planned instruction that meets and is aligned with all of the Pennsylvania Standards in every subject area and grade to be offered according to the application in Year 1 of the charter, as detailed in the findings of fact. Among other inadequacies in the Charter School’s planned curriculum, the Charter School’s curricular documents, its ELA, science, social studies, health and physical education, and French curriculum are not aligned with all of the individual Pennsylvania standards applicable to the different grades. Expecting the standards to be taught at the indicated grade level by subject area also correlates with the accountability standards for State assessment requirements for the PSSA exams. And by failing to align curriculum with appropriate grade levels, a student who would enroll in the charter school at a point after it offers that instruction but before it is called for in the state standards would likely miss the opportunity for learning. In addition, the MTSS plan lacks the necessary components and explanation to ensure that students who are not making the expected progress receive necessary supports and interventions.

**D. Facility and budgetary planning – section 1719-A(9), (11)**

A proposed charter school’s financial plan must be adequate to show that it is capable of providing a comprehensive learning experience for students. *Central Dauphin School District v. Founding Coalition, Infinity Charter School*, 847 A.2d 195, 202 (Pa. Cmwlth. 2004), *appeal*

*denied*, 860 A.2d 491 (Pa.). The charter school’s budget need not contain specific program allotments where the record supports a finding that the school can comply with the learning requirements of the CSL. *McKeesport Area School District v. Propel Charter School McKeesport*, 888 A.2d 912, 918 (Pa. Cmwlth. 2005). A financial plan only has to show that it has considered the budgeting issues and that based on reasonable assumptions, it will have the necessary funds to operate the school it proposes. *Insight PA Cyber Charter School v. Dept. of Education*, 162 A.3d 591, 611 (Pa. Cmwlth. 2017).

To the extent that the Charter School’s application does not include extensive details of the finer points of its budget, the Board finds that by itself is not a basis to deny the application for a charter. The application demonstrates that the Charter School has considered the resources necessary to conduct operations. *See, Vision Academy Charter School of Excellence v. Southeast Delco School District*, 2023 WL 2702373, \*7 (Pa. Cmwlth., no. 46 C.D. 2020, filed March 30, 2023) (memorandum opinion).

**E. Code of student conduct – sections 1719-A(7), 1318**

To the extent that the Charter School has not sufficiently included appropriate details of its code of student conduct, the Board concludes that, by itself, is not sufficient grounds to deny the charter application.

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

The CSL states that one of the criteria by which a local board of school directors shall evaluate a charter school application is “[t]he extent to which the charter school may serve as a model for other public schools.” Section 1717-A(e)(2)(iv), 24 P.S. § 17-1717-A(e)(2)(iv). In rejecting an argument based on this criterion that a charter school’s core curriculum, assessment plans, and planned instructional programs are nearly identical to the school district’s public school,

the Commonwealth Court has indicated as follows:

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.” 24 P.S. § 17-1702-A(2). In order to achieve this goal, the CSL requires an applicant to provide information 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.” 24 P.S. § 17-1719-A(5).

In the case sub judice, the record establishes that [the charter school] offers a learning environment that is unique and different from that in the [d]istrict’s public schools. [The charter school’s] proposed plan includes 190 days of school with 6 hours of instruction per day, small classes, high standards for achievement, parent/community involvement, tutorial and positive behavior support, frequent assessments, and a proposed 2.5-hour literacy block. . . . While there may be similarities between [the charter school] and the existing public schools, similarities, alone, are insufficient to support a finding of non-compliance with the CSL when there is substantial evidence of uniqueness. . . . Therefore, we hold that CAB did not err in finding that [the charter school’s] curriculum satisfies the requirements of the CSL.

*Montour School District v. Propel Charter School-Montour*, 889 A.2d 682, 687-88 (Pa. Cmwlth. 2006) (citations omitted). However, 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, as required under section 1717-A(e)(2)(ii) of the CSL.” *Spartansburg Community Charter School*, No. 2016-02, at 31.

As discussed above, the proposed curriculum for the Charter School is not adequate to offer comprehensive learning experiences to its students as required by the CSL. Moreover, the Charter School’s curriculum will replicate that of PPA and Arts and Sciences, schools that have had mixed success. The Board concludes that the Charter School would not be a good model for other public schools.

## **G. Other grounds**

The Charter School argues that the Board should not give due consideration to the School District's findings, as it asserts that the vast majority of grounds for denial raised by the School District are blatantly frivolous and thus show that the School District either has a poor understanding of the applicable legal standards or is exceedingly biased against the Charter School. The School District responds that the evidence of record which it discusses demonstrates that its grounds for denial are not frivolous and that it is not biased against the Charter School.

The Board rejects this argument. Its reading of the record demonstrates that the School District has been fair albeit demanding in its evaluation of the charter school application. Moreover, except as discussed above, the Board itself has come to the same conclusions as the School District.

## **V. CONCLUSION**

For all of the reasons stated above giving due consideration to the findings of the School District, the evidentiary record, and the requirements of the CSL, the Board finds that there are sufficient grounds<sup>6</sup> and thus it was appropriate to deny the Charter School's application. Accordingly, the following order shall enter:

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<sup>6</sup> See, *New Hope Academy Charter School v. School Dist. of City of York*, 89 A.3d 731, 740 n.11 (Pa. Cmwlth. 2014) (because the charter school's poor academic performance constituted valid and sufficient grounds for nonrenewal of its charter, it is not necessary to determine whether additional violations are sufficient by themselves to sustain the nonrenewal).

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

<b>Joan Myers Brown Academy:</b>	:	
<b>A String Theory Charter School,</b>	:	
<b>Petitioner</b>	:	
	:	
v.	:	<b>CAB Docket No. 2022-02</b>
	:	
<b>School District of Philadelphia,</b>	:	
<b>Respondent</b>	:	

**ORDER**

AND NOW, this 16th day of June 2023, upon consideration of the Motion to Supplement, filed on January 20, 2023, by the School District of Philadelphia, and the Motion to Supplement filed on February 20, 2023, by the Charter School, to the State Charter School Appeal Board, and the responses thereto, and based upon the foregoing and the votes of this Board,<sup>7</sup> **IT IS HEREBY ORDERED** that the School District’s Motion to Supplement and the Charter School’s Motion to Supplement are **GRANTED**.

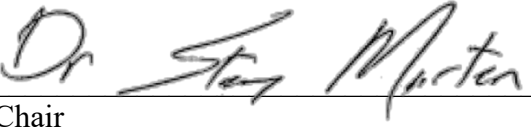
It is further **ORDERED**, following a thorough review of the record and based upon the foregoing and the April 11, 2023, majority vote of the State Charter School Appeal Board<sup>8</sup>, the February 27, 2020, decision of the School District of Philadelphia to deny a charter is **AFFIRMED**, and the appeal of Joan Myers Brown Academy: A String Theory Charter School is **DENIED**.

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<sup>7</sup> At the Board’s meeting on April 11, 2023, through separate votes on each Motion to Supplement, the School District’s Motion to Supplement and the Charter School’s Motion to Supplement were granted by a vote of 4 to 0 with CAB members Martin, Schwartz, Faustman, and Killion voting to grant both Motions to Supplement. Acting Secretary of Education Dr. Mumin abstained.

<sup>8</sup> By a vote of 3 to 1, CAB voted to deny the appeal with members Marten, Schwartz, and Faustman voting to deny the appeal and Killion voting to grant. Acting Secretary of Education Dr. Mumin abstained.

For the State Charter School Appeal Board

  
Chair

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