POCONO MOUNTAIN SCHOOL DISTRICT
BOARD OF SCHOOL DIRECTORS

IN RE: POCONO CHARTER HIGH SCHOOL
FOR THE PERFORMING AND VISUAL ARTS

2019 CHARTER SCHOOL APPLICATION

ADJUDICATION

The Board of School Directors ("School Board") adopts this Adjudication regarding the 2019 Charter School Application ("Application") filed with the Pocono Mountain School District ("School District") by the applicant for the Pocono Charter High School for the Performing and Visual Arts ("Applicant", "Charter School" or "PCHS"). For the reasons that follow, the Application is denied.

1. Findings of Fact

1. On November 13, 2019, the Applicant filed the Application with the School District. (PCHS 1-493).¹

2. On November 27, 2019, Dr. Elizabeth Robison, Superintendent of Schools, wrote to the Applicant acknowledging receipt of the Application on November 13, 2019, and advising the Applicant of the scheduling of a public hearing for December 17, 2019. Dr. Robison's letter also stated as follows:

   The Application should have been complete upon submission to the School District; however, for purposes of clarity, should the applicant desire to submit any additional information, the applicant must submit those materials so that the documents are received by the School District no later than Tuesday,

¹ The record for the Application will be referred to by reference to the Bates Stamped number beginning with the prefix "PCHS".
December 3, 2019. Any supplemental materials received after December 3, 2019, will not be accepted or considered.

(PCHS 494-495) (emphasis in original).

3. The Applicant signed an acknowledgement of the letter on November 27, 2019. (PCHS 494-495).

4. The Applicant did not submit any supplemental materials by the December 3, 2019 deadline.

5. On December 17, 2019, the School Board held a public hearing on the Application. The public hearing was stenographically recorded.2

6. A second public hearing was held on February 3, 2020, which was also stenographically recorded.

7. On February 3, 2020, the administration of the School District gave an Administrative Report containing an evaluation of the Application, which was supplied to the Applicant.

8. Following the second hearing, the School District permitted the Applicant to submit a concluding document to further assist the School Board in its review and to respond to issues raised in the School District administration's review of the Application.

9. The complete record under review by the School Board regarding the Application includes the following documents:

   a. The Application including all submitted attachments, which was marked as Charter School Exhibit No. 1 (PCHS 1-493; 12/17/19 N.T. 11);

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2 The Notes of Testimony from the hearings will be referred to as “[Date of hearing] N.T. [page number from transcript].”

3 At the December 17, 2019 and February 3, 2020 hearings, the Applicant attempted to introduce several additional documents into the record, which were referred to as Charter School Exhibit Nos. 3-14. (12/17/19 N.T. 19-21; 2/3/2020 N.T. 76-78). No Charter School Exhibit No. 2 was introduced. Because the Applicant had not submitted those documents by the supplementation deadline established by the School District, the documents were not admitted. Charter School Exhibit No. 12 is already in the record as School District Exhibit No. 5, however.
b. Letter dated November 27, 2019 from Dr. Robison to the Applicant with the Applicant’s signature acknowledgment dated on the same day, marked as School District Exhibit No. 1 (PCHS 494-495; 12/17/19 N.T. 11);

c. Proof of advertisement of the December 17, 2019 hearing, marked as School District Exhibit No. 2 (PCHS 496; 12/17/19 N.T. 12);

d. January 6, 2020 letter from Dr. Robison to the Applicant regarding the second hearing date, marked as School District Exhibit No. 3 (PCHS 497; 2/3/2020 N.T. 75).

e. Proof of advertisement of the February 3, 2020 hearing, marked as School District Exhibit No. 4 (PCHS 498; 2/3/2020 N.T. 75);

f. Resolution passed by the Board of School Directors on December 4, 2019 regarding the procedure for consideration for charter school applications, marked as School District Exhibit No. 5 (PCHS 499-502; 2/3/2020 N.T. 75);

g. The Administrative Review and Report issued by the School District, marked as School District Exhibit No. 6 (PCHS 503-608; 2/3/2020 N.T. 118);

h. The Applicant’s Concluding Document submitted on February 13, 2020 (PCHS 609-614);

i. Transcript from the December 17, 2019 hearing; and

j. Transcript from the February 3, 2020 hearing.

**The School District’s Policy on Charter Schools and Charter School Application Procedures**

10. The School District’s Policy 140 on “Charter Schools”, publicly available at [https://go.boarddocs.com/pa/pmsd/Board.nsf/Public#](https://go.boarddocs.com/pa/pmsd/Board.nsf/Public#), was last modified in 2003. Policy 140 requires charter school applicants to submit written responses to various questions identified in the
policy as “Hurdle Criteria”. The Applicant provided those responses to the Hurdle Criteria simultaneously with the submission of its Application. (PCHS 190-195).

11. The initial board hearing was then scheduled after submission of the Application and the Hurdle Criteria, in accordance with the hearing requirements of the Charter School Law, which requires a hearing to be held within 45 days of receipt of the application.

12. The School Board must comply with the requirements and timelines in the Charter School Law for the processing of charter school applications and the holding of hearings.

13. The School District’s Policy 140 does not provide any authority for charter applicants to submit supplemental materials after an application is submitted.

14. On December 4, 2019, the School Board voted at a public meeting to adopt the “Resolution Regarding Charter School Application Procedures” (“Resolution”), which provides additional information regarding what would occur at the public hearings and how applications would be processed. (PCHS 499-502).

15. The Resolution, inter alia, requires the “School District to establish a deadline for the submission of any supplemental materials by the applicant, after which no additional materials will be accepted and/or considered by the Board, except in the Board’s sole discretion.” (PCHS 500).

16. Prior to the adoption of the Resolution by the School Board, the School District had established a deadline for submission of supplemental materials of December 3, 2019, which was conveyed to the applicant in the emailed letter dated November 27, 2019, and acknowledged by the Applicant on the same date. (PCHS 494-495).

17. The School District’s establishment of the supplemental material submission deadline is consistent with the Resolution.
Founding Group

18. Dr. Thomas Lubben is the “Founder” and designated representative of the Applicant. (PCHS 3; 12/17/19 N.T. 21).

19. Dr. Lubben runs a business called TLC Arts, LLC (“TLC”). TLC is providing startup services to the Applicant and may provide consulting services to the Charter School if a charter is granted. (12/17/19 N.T. 41-42).

20. Within the Application and at the hearings, Dr. Lubben repeatedly referenced his roles in founding other charter schools operating in the Lehigh Valley area, namely Lehigh Valley Charter High School for the Performing Arts (“Charter Arts”), Easton Arts Academy Charter School, Arts Academy Charter School and Arts Academy Charter Middle School. (See e.g. PCHS 2, 43-44; 12/17/19 N.T. 21-22).

21. None of those charter schools were chartered by the School District. As such, the School District has no information regarding what those respective applications contained, the quality of those applications, when those applications were granted or by whom, or the circumstances under which those charter applications were reviewed or granted.

22. The only one of those four schools that offers grades 9-12 is Charter Arts. (12/17/19 N.T. 22).

23. Dr. Lubben has not had any role in the operation or governance of Charter Arts since 2010. He has not served as an employee, board member or consultant to Charter Arts since 2010. TLC has never served as a contractor to Charter Arts. (12/17/19 N.T. 22, 44-45).

24. The curriculum that Dr. Lubben submitted with the pending Application was not supplied by Charter Arts. Rather, the curriculum was created by Dr. Lubben in 2003 and then modified by him after leaving Charter Arts. (12/17/19 N.T. 45).
25. Because Charter Arts has not provided its current curriculum\(^4\) or current programming as part of the instant Application, the Charter School cannot be considered to be a replication of the current instructional programming or curriculum in place at Charter Arts.

26. Despite the fact that the Application and the transcripts are replete with references to Dr. Lubben’s role and experience founding other charter schools, representatives from the founding Board of Trustees (“Charter Board”) for the Charter School could not tell the School Board at the public hearings whether or not TLC or Dr. Lubben would be utilized to provide services to the Charter School, should a charter be received. (12/17/19 N.T. 43; 2/3/2020 N.T. 88-90). Additionally, the Applicant did not give any information as to what services TLC or Dr. Lubben might provide to the Charter School, indicating that such a decision had not yet been discussed by the Charter Board. (12/17/19 N.T. 44).

27. The Applicant would not disclose whether anyone has been selected to serve as a staff member for the Charter School, and stated that no one has been identified to serve in the roles of principal or executive director. (12/17/19 N.T. 46-47).

28. The founding group makes a number of incorrect references to the School District throughout the Application, calling the School District or the School Board: the “Pocono School District” or “Mount Pocono School District Board of Control” (See e.g. PCHS 44, 48). The incorrect references raise concerns as to the familiarity of the Applicant with the region or area to which it is applying.

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\(^4\) The School District presumes that Charter Arts’ curriculum would be aligned with all applicable standards, including but not limited to, Pennsylvania Core and Keystone Exam anchor standards, which have all changed since 2003.
Curriculum and Educational Program

29. PCHS would open in the 2020-2021 school year with 300 students in the full complement of grades, 9-12. (PCHS 3, 43, 138; 12/17/19 N.T. 38). The budget is based on full enrollment of 300 students. (12/17/19 N.T. 37).

30. The Applicant did not sign the “Assurances for Public Charter High (sic) Schools” page. (PCHS 79).

31. The Charter School intends to be a unique performing arts charter school, offering a half day instructional program in an artistic major of the student’s choice. Such programming is what the Application suggests makes it different from what is currently being offered in Pocono Mountain School District and the surrounding school districts. (12/17/19 N.T. 31; PCHS 610, ¶ 9).

32. According to the “School Focus” overview in the Application Fact Sheet, in addition to the arts education provided by the Charter School, “[s]tudents will be provided with serious internships in the artistic major of their choice and will be prepared to either enter that area or proceed to college for further training or development.” (PCHS 3).

33. The Application further states:

   Throughout our academic programs, we will heavily infuse and integrate the arts. Much of our experience with our high school in Bethlehem indicates that this occurs in a more natural state. We strive to hire all academic teachers with some level of background and deep interest in the arts. This is combined with students who represent the varied artistic majors in the school. The result is a unique fusion process . . . .

   In addition, the curriculum will integrate to the greatest extent possible, materials on the arts or “other” arts that will help the students understand the connection between their academic and artistic work at the school. (PCHS 15).
34. Discrepancies exist in the Applicant's planning for what types of artistic majors are to be offered to students. In the narrative, the following artistic majors are referenced: Visual and Digital Art, Vocal Music, Instrumental Music, Dance, Figure Skating, Theatre and Musical Theater. (PCHS 9). Yet, in the rubric sheets for the audition process, a sheet is provided for “Media-Journalism”. (PCHS 178). The Applicant provided an unclear response at the hearing as to whether a journalism major would be offered. (2/3/2020 N.T. 100).

35. There are no course listings provided within any artistic major. Nor is a curriculum framework provided for any artistic course within the artistic major, other than the figure skating major. (PCHS 509, 510-511).

36. The Applicant did not submit any documents whatsoever for Musical Theatre, Digital Art or Instrumental Music. (PCHS 509).

37. These omissions contradict or fail to reflect the Applicant's representations at the public hearings that students would take 16 credits over four years in their artistic majors. For example, for vocal and instrumental music majors, the testimony at the hearing indicated that students in this major program would supposedly have four credits in music history, four credits in music theory on the college level, four credits in ensemble experiences, two credits in composition and arranging including improvisation, one credit in music leadership and one credit in careers in instrumental and vocal music. (12/17/19 N.T. 27). For dance majors, the 16 credits supposedly include four credits of dance history, five credits in varied dance techniques, two credits in dance improvisation, two credits in dance compensation, two credits in choreography and one credit in vocations in dance. (Id. at 31). Yet, there are no course descriptions, planned instruction, and course of studies guides provided that reflect such instruction in any artistic major or in any grade level.
38. One hundred (100) artistic course guides and curricula will be offered at the Charter School according to the Applicant (12/17/19 N.T. 32), but none of those artistic course guides or curricula are included or reflected in the Application curriculum. (PCHS 196-493).

39. The Application also omits any differentiation of courses within any artistic major for students with varying degrees of experience or advancement.

40. The Application fails to include a curriculum framework for the academic classes. No scope and sequences are provided for any core subject area or academic course. The documents submitted lack instructional materials, resources and specific assessments, and did not reflect clear alignment to the PA Core standards. (PCHS 509).

41. No comprehensive assessment plan is provided in the Application. In one case where a type of assessment is referenced in the 11th grade English course, the assessment identified is the New York Regents Examination, which is not appropriate for Pennsylvania. (PCHS 215). This error further calls into question the legitimacy of the Applicant’s curriculum planning and sourcing of documents submitted with the Application.

42. The Application does not contain any discussion about graduation requirements.

43. The Application does not contain a credit recovery or remediation plan to address students who enroll in the Charter School substantially behind in credits toward PCHS graduation requirements.

44. The Applicant did not provide any information about the internship program or requirement for students; how the internship would factor into the student’s attainment of graduation requirements; who (businesses, community groups, etc.) would be partnering with PCHS to offer internships to PCHS students; or how students would travel to internships during the school day. Given that students in grades 9-12 would be enrolling in the Charter School in year
1, the lack of planning for how upper grade level students would have those opportunities is a material concern.

45. Inconsistent information is provided in the Application for the proposed school schedule at different grade levels. (PCHS 29). As noted by the School District Administrators in their report, the schedule does not clearly delineate how the arts programming would work at the different grade levels or establish that PCHS students would receive sufficient hours for credit-bearing courses when they are only scheduled to have 75 hours of core academic instruction per course per school year. (PCHS 507).

46. The academic goals and objectives included in the Application do not correlate to the majority of the accountability areas identified in Pennsylvania’s Consolidated State Plan, the Every Student Succeeds Act ("ESSA") and the Future Ready Index accountability system. No goals reflect subgroup achievement performance, academic growth, absenteeism, graduation rate, English Language growth and proficiency, and college and career readiness measures. Further, there are no goals for years 1 and 2, which disregards the fact that students will begin taking Keystone Exams during the 2020-2021 school year, with Keystone Exam data reported out for 11th grade students for that same year. (PCHS 11-13, 507-508).

47. None of the core academic subject area documents submitted in PCHS 196-449 reflect artistic subjects or concepts being integrated within the academic curriculum. Conversely, the minimal artistic materials provided do not discuss how the arts will be infused or integrated into the academic program. The lone exception is the figure skating document, which includes a brief discussion on PCHS 492-493 called “Integration of the Arts”. It is unclear whether the “Integration of the Arts” course to be provided in each grade level for figure skaters is a stand-alone course or
whether the integration is to be woven into a core subject area or artistic major course within each grade level.

48. No curricular documents were submitted in the Application for physical education, family and consumer science, or instruction on the Pennsylvania technology education standards. (PCHS 508-509). A Personal Finance course is now required in Pennsylvania, but it is not evidenced at any grade level in the Application. (PCHS 509).

49. The School Board agrees with the Administrator’s assessment that the Applicant does not include any materials regarding any guidance curriculum to outline the full direct and indirect services provided to students by the school counselor, the scope and sequence of the guidance curriculum, and the mandated Career Education and Work Standards that are needed to meet the PA Future Ready Index. (PCHS 528).

50. The School District’s Administration reviewed the totality of curricular and instructional materials provided by the Applicant in the Application. The administration concluded that the Applicant’s submitted documents did not evidence planned instruction as defined in Chapter 4 for all subjects to be offered and required to be offered, and also contain deficiencies when compared to the standards applicable to high schools in Pennsylvania. The School Board incorporates herein and adopts the findings found on PCHS 508-515.

51. The Charter School anticipates serving a population of ELs and will employ an “English Language Learner” (sic) program specialist. (PCHS 27).

52. However, the pre-enrollment application available on the Applicant’s website is only in English, which may serve as a barrier for enrollment to non-English speaking families. (PCHS 528-529).
53. The Application contains a discussion about services to ELs on PCHS 25-28.

54. No Language Instruction Educational Program is provided that contains the eight elements required under Pennsylvania Department of Education guidance, which is based on federal and state law.

55. The School District Administrators found, and the School Board agrees, that minimal details are provided about the EL program implementation, including a clear program model that would be utilized by the Charter School and how services would be implemented to EL students. (PCHS 516-518). These are additional deficiencies in the Applicant’s planning.

56. The Applicant’s discussion of special education programming contains minimal detail about how child find requirements would be met, what screening and tiered intervention system would be used, and what supports and services would be in place to assist students with disabilities to achieve success in the academic and artistic courses. (PCHS 518-523). Inclusion of policies, procedures or other types of documents or detailed information reflective of how the Charter School would implement these requirements were missing from the Application.

57. The Application does not discuss a Student Assistance Program to address the behavioral and mental health needs of students. (PCHS 525).

**Professional Development**

58. The Professional Development Plan (“PDP”) included in the Application states that “in-service for staff will occupy from 5-10 days during the first summer”. (PCHS 182). The topics identified in the PDP are a general list of topics that will be covered in July-August during in-service and then during faculty meetings in other months throughout the year. (Id.)

59. The proposed 2020-2021 school calendar submitted with the Application does not reflect any in-service, professional development trainings or other staff days in July 2020. Per the
calendar, staff reports on August 12 and students report on August 25, but no information is provided as to how many staff in-service days will occur between August 12 and August 25. (PCHS 184).

60. The PDP also does not reflect any monthly professional development on programming reflective of EL instructional practices or on development of skills for working with diverse groups of students or cross-cultural awareness, as represented in the Application. (PCHS 13, 25).

61. The PDP lacks details about who is delivering the professional development or when mandated trainings would take place (e.g. in the areas of mandated reporters, suicide prevention and teacher induction). The PDP does not identify what the outcomes for staff participation in the programs will be. (PCHS 182, 533-534).

62. The PDP does not reflect the unique educational programming proposed by the Applicant and, for example, does not even schedule a professional development topic on “Arts Integration” until September, which would be after the school year begins. (PCHS 182). In contrast, the narrative promised that the educational and teaching model would “infuse[] the creative arts into a rigorous project and inquiry-based curriculum” and “in order to absorb and adopt this instructional approach, staff members will participate in intensive professional development over a prolonged period of time.” (PCHS 41).

63. Although the PDP generally references “Curriculum Planning” as one of 7 topics that staff would receive training on during the 5-10 days during the first summer (PCHS 182), the document was not specific on what would be included in the “Curriculum Planning” training and which staff would be trained in what subject or by whom. Neither the PDP nor the school calendar reflect the representations in the Application that: “Teachers will also be expected to spend several weeks
each summer developing curriculum, collecting materials, and working together to plan and coordinate thematic curriculum within and across grade levels.” (PCHS 67).

64. Budgeting for professional development also appears inadequate. With each of the 35 administrators and teachers in year 1 attending a minimum of one professional conference per year, plus the regular professional development that would need to occur on-site at the school, $24,750 would not be sufficient. (PCHS 532).

**Admissions and Enrollment Process**

65. An Admissions Policy was not provided with the Application.

66. The Applicant represents that students will still need to audition for the school, but that auditions will be used “solely for student placement within their choice of major (i.e. beginner or advanced level).” The Applicant further represents that “no student will be denied admission to the Charter School based on their audition.” (PCHS 65).

67. Although the Applicant represents that “a sample rubric for each of the artistic areas” are included as Appendix F (PCHS 65), the Applicant did not provide completed rubrics for any of the artistic majors other than dance. (PCHS 174-181). Incomplete rubric sheets for theatre, figure skating, media-journalism, instrumental, vocal and design-visual art are attached to the Application. None of the rubrics submitted contain any criteria or standards on which students will be assessed for placement into courses within an artistic major differentiated based on beginner, advanced or some other assessed skill level.

68. In the section of the narrative wherein the Applicant should have described its lottery process (PCHS 65-66), no information is provided as to how the lottery would be utilized or how the audition process would be incorporated into the lottery process.
Suspension and Expulsion Procedures


70. The Code of Conduct contains a list of some Level I-V infractions that might form the basis for discipline, but the descriptors and assigned consequences are vague and limited. (PCHS 529).

71. Nowhere in the Code of Conduct is an explanation of the procedural protections that would apply to students facing suspension or expulsion, including due process protections for students with disabilities. (PCHS 524, 529).

72. In addition, the document states that students who engage in Level IV infractions will be referred to the “Superintendent” for an expulsion hearing. (PCHS 187). The Charter School will not have a Superintendent.

73. Unexcused absences in excess of an established maximum is identified as a ground for expulsion in the narrative. (PCHS 73).

Community Support

74. On PCHS 36, the Applicant states:

The Pocono Charter High School for the Performing and Visual Arts is in the process of building relationships with a wide range of area businesses and organizations in the county. The School has several letters of support from established businesses and programs and is in the process of gathering more. As noted in the charter, we will build these relationships to provide internships, externships, mentoring programs and the use of certain facilities. (PCHS 36).

75. In the section of the Application wherein the Applicant is to “[p]rove information on the manner in which community groups are involved in the Charter High School (sic) planning process”, the Applicant states as follows: “We are continuing the process of reaching and meeting with a wide group of community organizations. These groups will support us, once the charter is
approved. Our coalition support will be comprised by a variety of Art affiliated groups in the Pocono region.” (PCHS 47).

76. The Applicant, however, never identifies a single community organization or group that was involved in the planning process for the Charter School, including any arts-affiliated groups. No relationships with area businesses and organizations, including Pocono Mountain-area arts organizations, are reflected in the Application, supplemental materials or public comment received at the hearings.

77. Twelve (12) “Support Statements” are attached to the Application. The Support Statements appear to reflect the interest of 12 individuals to serve on an “Advisory Board of area artists to help further stimulate the arts in the area”. (PCHS 111-122). Only five of the Support Statements provide addresses located in the School District. (PCHS 546). None of the Support Statements reflect a desire or commitment of any organization to support or partner with the Charter School in any way.

78. The Application does not identify any specific community meetings, parent meetings or other gatherings held to market or gain support for PCHS. The only gatherings that are referenced are several open houses from late April through mid-June during 2015 and 2016, but these gatherings were for a previous applicant that was applying for an elementary school program to be located at a different facility. (PCHS 44-45; 2/3/2020 N.T. 84-85, 87).

79. Seven (7) individuals allegedly constitute the “founding board” of PCHS, including Lubben. Seven individuals (Roger Metzger, Lynn Settaducatto, Dan Padget, Herman Simpson, Clavertis Miller, LaNiece Simpson and Dr. Lubben) are listed on PCHS 53-54. At the first hearing the Applicant clarified that Clavertis Miller is no longer on the Board, but Mike Aruanno now is. (12/17/19 N.T. 23, 25, 39).
80. At the December 17, 2019 and February 3, 2020 hearings, only 2 individuals total provided public comment in support of the Application. (12/17/19 N.T. 58-64; 2/3/2020 N.T. 180-227).

81. A one-page list of “On-Line Enrollments as of 11/4/19” is attached to the Application. Of the 13 student names on the list, only four (4) students are residents of the School District based upon the address information provided. (PCHS 87). Only two of the students listed on PCHS 87 supplied a Pre-Enrollment Notification Form. (Cf. 87, 96 and 97). No other information is provided to show what a parent or guardian may have submitted in order to be included on the “On-Line Enrollments as of 11/4/19” list.

82. The Applicant submitted “Pre-Enrollment Notification Forms” as evidence of support. (PCHS 88-97). Of the 10 total Forms, the names of two (2) of the students also appear on the “On-Line Enrollments as of 11/4/19” spreadsheet. Only four (4) of the additional eight (8) students whose names do not appear on that spreadsheet are residents of the School District.

83. The information provided reflects a total of 21 students who pre-enrolled at PCHS, but only eight (8) of those students are residents of the School District.

84. Signatures on a petition also entitled “Support Statement” (“Petitions”) are attached to the Application. (PCHS 99-106). Regarding those Petitions:

a. The signatures on PCHS 103-104 are duplicative of the signatures on PCHS 101-102.

b. A total of 25 non-duplicative signatures are reflected in the Petitions.

c. Thirteen (13) of the 25 individuals who signed the Petitions are also parents/guardians and/or the students reflected in the Pre-Enrollment forms, based upon a comparison of the names in those documents. (Cf. 99-106 with 87-98).
85. The Applicant also submitted an Enrollment Matrix dated June 24, 2016 – approximately 3 ½ years old – which contains the names of 58 students who supposedly were interested in enrollment at a totally different charter school that would focus on elementary grades. (PCHS 44-45, 86, 107-108). With regard to the Enrollment Matrix:

a. It is not known if all of the students reflected in the Enrollment Matrix from 2016 continue to desire enrollment in any charter school, let alone enrollment in a high school with a completely different grade structure as the charter school being proposed in 2016.

b. The information provided in the Enrollment Matrix does not disclose the current grade of any student in 2016; therefore, it is not known if any student would be eligible for enrollment in 9th-12th grade during the 2020-2021 school year.

c. The Applicant has not produced any evidence of continued interest in enrollment by any of these students for the 2020-2021 school year.

d. Only 13 students listed in the Enrollment Matrix are School District residents. (PCHS 107-108, 545).

Facility

86. PCHS is proposed to be located in the former site of the Pocono Mountain Charter School. (12/17/19 N.T. 54).

87. Exchange10, LLC, recently purchased the building for $800,000, and has proposed to lease the building to the Charter School. (PCHS 172-173, 540).

88. The Application does not discuss the scope of the renovations that would need to occur in order to obtain a certificate of occupancy for the facility and to reflect the improvements that would need to be made to allow the Charter School to implement its proposed programming at the site.
89. Because of these omissions, the School District administration conducted an on-site visit to the proposed facility, assisted by Mr. Jaimie Lynch of D'Huy Engineering, a civil engineer who has experience with school projects. Following the visit, Mr. Lynch provided a letter outlining work that would need to occur to obtain a certificate of occupancy along with a conceptual cost estimate for such work and a timetable. (PCHS 548-562). Mr. Lynch indicated that, given the scope of the work that needed to be completed, he did not believe the building or site could be ready for a certificate of occupancy from the local municipality prior to August 2021. (PCHS 555).

90. The Applicant did not respond to Mr. Lynch’s findings in its Concluding Document.

91. The Application does not contain a timetable for renovations to the building or the issuance of a certificate of occupancy relative to the proposal to open to staff and students in August 2020.

92. Inconsistent statements are made in the Application documents regarding the tenant’s responsibilities for maintenance versus the landlord’s responsibilities. (Cf. PCHS 60, 172-173).

**Student Health Services and Safety**

93. The charter application template requires an applicant to “[d]escribe its plan for providing school health services as required under Article XIV of the Public School Code”. (PCHS 77).

94. In response to that section, the Applicant identified the provision of school nursing services, growth screenings, vision screenings and immunization assessments. (PCHS 77). The Applicant did not identify that any medical or dental examinations or hearing screenings would be provided to students or how the Charter School would provide for such examinations. (Id.) Medical examinations are required for students in 10th or 11th grade, and hearing screenings are required for students in 11th grade. (PCHS 526).

95. In the “Safety” section of the Application in response to the prompt to “submit written documentation of intent to comply with all applicable safety requirements”, the Applicant did not...
address Safe2Say requirements applicable to charter schools or submit any documents that explain how the Charter School would implement all Safe2Say procedures and requirements. (PCHS 75-77, 531).

96. A Safety Plan incorporating the requirements of Act 26 has not been provided. (PCHS 530).

**Financial Planning and Staffing**

97. In the Application narrative, the Applicant anticipates that the special education enrollment at the Charter School would be 10% or less each year. (PCHS 43). However, in the budget, the Applicant relies on an anticipated population of students with disabilities of 15%, which results in higher revenues that would be reflected with a 10% or less population.

98. The staffing list on which the budget is based differs from the staffing list provided in the Application narrative. (Cf. PCHS 70-71 to 139). According to the list in the budget, 49.50 Full-Time Equivalent (“FTE”) positions are budgeted for year 1. (PCHS 139). In comparison, the narrative staffing list identifies 45.00 FTE positions for 2020, although it is incorrectly added up as 58.50 positions. (PCHS 70-71). Variances are not explained. (PCHS 536-538).

99. The position of “Academic Coordinator” is charged with overseeing curriculum revision and ongoing development. (PCHS 193). However, this position is not added into the staffing list or budget until year 2. (PHCS 70, 139).

100. A Music Theatre teacher is not the budget but is provided on the staffing list and would be required to implement the Musical Theatre artistic major. (PCHS 537).

101. According to the narrative staffing list, only two teachers in each core subject area are budgeted in year 1 for 300 students over 4 high school grade levels. (PCHS 139). The Applicant has not explained how that proposed arrangement would work, given the different
subjects that would be taught over four grades with the corresponding certification requirements that apply to high school-level courses, particularly in science. (PCHS 531).

102. Indicated practices for allowing the principal to maintain a revolving checking account for purchases is not in accordance with best practices regarding school business and financial operations. (PCHS 535).

103. The Application contains outdated references to the Federal Savings and Loan Insurance Corporation, which has not existed since the late 1980s. (PCHS 56-57, 536).

104. The Applicant does not yet know where the figure skating program would occur, and only has an offer from an ice rink in Wilkes-Barre, which is at least a 30-40 minute drive from Pocono Mountain. (2/3/2020 N.T. 112, 116).

105. The budgeted revenue anticipated from local districts only reflects payment at the School District’s rates, which has the highest rates in Monroe County. (PCHS 538). Given the fact that the limited pre-enrollment information provided reflects that a majority of the potential enrollment of students will come from other school districts in Monroe County, the budgeted revenue reflects poor planning.

106. Certain budgeted expenditures reflect consumable supplies that would be linked to the number of students enrolled each year. As enrollment would increase, the expenditure should also increase consistent with the anticipated enrollment. However, the expenditures for “Special Ed & IDEA supplies” remains static at $10,000 per year over the course of five years, even though the number of special education students is anticipated to rise from 45 students in year 1 to 89 students by year 5. (PCHS 138, 140, 539).

107. According to the Applicant’s representations on the “Application Fact Sheet”, the Applicant does not have an existing retirement system. (PCHS 3).
108. The Applicant proposes to have its employees enroll in an alternative retirement plan rather than participate in the Public School Employees Retirement System ("PSERS"). (PCHS 69). The alternative retirement plan proposed is a "457 plan" offered by PennServ. (Id.). However, no plan documents (approved or proposed) were provided with the Application.

109. Should the alternative retirement plan not be approved by PSERS, the Applicant will incur PSERS expenditures, which will adversely affect the financial health of the Charter School by several hundred thousand dollars per year.

110. Regarding medical coverage, the Application provides as follows:

Medical Coverage: As provided under Act 22 full-time employees will be eligible to receive medical coverage commensurate with the coverage provided by the Pocono (sic) School District. Employees will be responsible for the requisite level of co-pay and other obligations associated with the coverage.

We are working with a qualified employee benefits company, who currently provides health coverage for Lehigh Valley Charter Arts High School, Arts Academy Middle School and both Arts Academy Elementary Schools. This is a first rate policy which offers an equivalent or better plan than that of Pocono Mountain School District. The cost projections for this plan are based on costs for similar Charter High (sic) Schools, such as the Lehigh Valley Performing Arts school and The Arts Academy Elementary Charter High (sic) School in Allentown. (PCHS 69).

111. The Application further provides: "Medical insurance will be limited to a Preferred Provider Organization (PPO) or an HMO; indemnity coverage will be provided if it can be obtained and if the employee will pay a share of the premiums similar to that paid by school employees in the Pocono (sic) School District or in surrounding counties. Prescription, dental and vision plans will be matched up to plans offered to the Pocono (sic) School District staff." (PCHS 62) (italics added).

112. Dr. Lubben testified at the hearing that he has not seen the School District's health insurance policy, does not know what coverage it provides, and would need to see it in order to

113. The Applicant did not attach a copy of any proposed health insurance policy (either for a PPO, HMO or any other policy) and did not provide any details about the health care plan, including but not limited to, coverage level, deductibles, co-pays and premium share to ensure the plan meets the requirements. (PCHS 539).

114. The startup budget does not include any costs for the hiring of a principal, Executive Director or any staff other than secretarial services prior to the first year of operation. (PCHS 153). Such expectations are inconsistent with the Timetable included in the narrative, which reflects preliminary staff in-service to take place during May 2020. (PCHS 75). The Applicant also testified at the hearing that the positions of executive director and principal would need to be filled prior to July 1, 2020 because those positions would need to be filled to get the school up and running. (12/17/19 N.T. 47-48).

Governance

115. Articles of Incorporation ("AOI") were not provided with the Application or submitted by the Applicant within the supplementation period.

116. The Applicant represented at the hearing that the AOI not included in the record have since been filed with the Department of State. No explanation was provided for why the AOI were not prepared and filed with the Application for review or submitted by the supplementation deadline.

117. Inconsistencies exist in the Application narrative (5-12 board members) and Bylaws (5-9 members) relative to the composition of the Charter Board. (Cf. PCHS 49 and 156).
118. The Bylaws permit Charter Board trustees to be removed with or without cause by a 2/3 vote of the board. (PCHS 165).

119. The Bylaws indicate that, should the Charter School be dissolved, assets will be distributed in accordance with the AOI. (PCHS 170). Because the AOI were not provided, it is not known if the dissolution process is in compliance with applicable law.

120. On PCHS 56, the Application references an Executive Committee of the Charter Board having authority to authorize expenditures over $5,000, but the creation of an Executive Committee is not reflected in the Bylaws or in the organizational chart submitted by the Applicant on PCHS 49. Nothing in the Application explains what the role or function of the Executive Committee would be, who would serve on such a committee, whether the Executive Committee would meet in public, or the authority the Executive Committee would wield vis-à-vis the Charter Board.

121. The Application refers to the creation of an Arts Advisory committee (PCHS 36) but does not identify or describe who would sit on the committee or the role of the committee in the operation of the Charter School. The Advisory Committee does not appear on the organizational chart provided by the Applicant. (PCHS 49).

122. Dr. Lubben is identified in the chart found on PCHS 54 as the “Charter School Founder & Consultant”. (PCHS 54).

123. “The board will utilize the founder and a consultant agency to provide additional oversight on the administrative team.” (PCHS 195).

124. The Application does not describe what services TLC is expected to provide to the Charter School. No contract between TLC and PCHS accompanied the Application.
125. TLC does not appear on the organizational chart for the Charter School. (PCHS 49).

126. TLC provides a propriety program, which the Applicant expects would be offered to PCHS. The proprietary program is the totality of the curriculum and programming model that has been submitted in the Application, including the non-traditional artistic major scheduling. (2/3/2020 N.T. 82).

127. If PCHS’s Charter Board ultimately decided not to enter into a contract with TLC, PCHS would not be able to use the curriculum and program model included in the Application. Dr. Lubben admitted that PCHS “would have to find some other program to use.” (2/3/2020 N.T. 83).

128. The contracts that TLC has entered into with two other charter schools are 10-year contracts. (2/3/2020 N.T. 81).

129. Although Dr. Lubben represented that contracts exist with two other charter schools, which would include Easton Arts Academy Charter School, during the closing argument, the Applicant’s counsel referenced Easton Arts as having “disassociated themselves with Dr. Lubben”. (2/3/2020 N.T. 177).

130. For those two other charter schools, TLC has been involved in the hiring of the leadership teams, presentation of final candidates for the leadership team, proposed vendors for the charter schools to use, provide services to the leadership team at those schools. Dr. Lubben would expect similar services to be provided to PCHS under a 10-year contract. (2/3/2020 N.T. 83-84).

131. The School District’s administration provided a number of newspaper articles suggesting that there has recently been significant leadership turnover and allegations rendered
against the most recently opened charter school of the schools founded by TLC, Easton Arts Academy Charter School, which opened in 2017. Although the newspaper articles themselves are not clear evidence of anything, the reporting calls into question TLC’s role, qualifications and experience providing staffing, board consulting and management services to this school founded by Dr. Lubben, and why it is important for the Charter Board to be engaging in arms-length transactions with management companies, consultants and lenders. (PCHS 543-545, 565-604).

132. Significant funds are included in the budget for “Consulting Expenses” ($100,000) and “Proprietary Services” ($100,000) without any explanation for what services are behind those fees. (PCHS 140). The $100,000 for Proprietary Services is an estimate for the services the proprietary services and programs to be provided by TLC. (2/3/2020 N.T. 111-112).

133. Dr. Lubben will also be providing the Charter School with a loan of $100,000 to pay start-up expenses. (12/17/19 N.T. 49-50). The record contains conflicting information as to whether that loan will bear interest (12/17/19 N.T. 49-50 vs. 139, 141), and does not address how the loan would be memorialized and conducted to ensure arms-length transactions are occurring.

134. The Applicant also proposes to obtain a $500,000 loan in year 1. Although no details were provided about the ability to obtain financing for this loan, at the hearing, the Applicant indicated that they would be looking to Community First Fund to obtain such funding. One of the individuals who is employed by TLC also serves as the co-Chair of the Board of Community First Fund. (12/17/19 N.T. 51-52; 2/3/2020 N.T. 93-96).

135. Stephan Wiltshire performs work for TLC Arts, LLC, and is also employed as an administrator of Executive Education Academy Charter School (“EEACS”). Mr. Wiltshire indicated at the hearings that he would continue in his employment role at EEACS and also provide
consulting, marketing and other services to PCHS as an employee of TLC Arts, should a charter be received. (12/17/19 N.T. 24, 41; 2/3/2020 N.T. 91-92).

136. The proposed President of the Charter Board is Roger Metzgar, a resident of the School District who works as a “Police Constable” according to his resume. (PCHS 46, 124). According to public records, on April 1, 2019, Mr. Metzgar pleaded nolo contendere to two counts of tampering with physical evidence, both misdemeanors of the second degree, and was placed on probation for one year. (PCHS 542, 563-564). While that recent conviction may not disqualify or bar Mr. Metzgar from serving on a non-profit board, it does call into question the suitability of whether he should be the figure head of a public charter school.

II. Evaluation Standards

The Charter School Law ("CSL"), Act of June 19, 1997, P.L. 225, as amended, 24 P.S. §17-1701-A et seq., 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:

A. The demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the public hearing;

B. 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;

C. The extent to which the application addresses the issues required by the CSL; and

D. The extent to which the charter school may serve as a model for other public schools.

24 P.S. § 17-1717-A(e)(2); 53 Pa. C.S.A. § 303(2).
The CSL requires charter school applicants to address the following issues in their applications:

1. The identity of the applicant;
2. The name of the proposed charter school;
3. The grade or age levels served by the school;
4. The proposed governance structure, 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. An admission policy and criteria for evaluating the admission of students that complies with the CSL;
7. The procedures that will be used regarding the suspension or expulsion of pupils;
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 that will be made for auditing the school;
10. Procedures to review parent complaints regarding the operation of the school;
11. A description of and address of the physical facility in which the charter school will be located, the ownership of the facility, and the lease arrangements;
12. Information on the proposed school calendar, including the length of the school day and school year;
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 student in extracurricular activities with the school district;

15. A report of criminal history record for all individuals who shall have direct contact with students;

16. An official clearance statement from the Department of Public Welfare; and

17. How the charter school will provide adequate liability and other appropriate insurance for the charter school, its employees and the board of trustees of the charter school.

24 P.S. §17-1719-A. In addition, cases from the State Charter School Appeal Board ("CAB") and the appellate courts interpreting these requirements provide additional parameters for the School District’s review. Against this backdrop, the Application filed for the Charter School will be examined.

III. Analysis

A. The Applicant Has Not Demonstrated Sustainable Support for the Charter School Plan by Teachers, Parents, Other Community Members and Students.

Section 1717-A(e)(2)(i) of the CSL requires the applicant to demonstrate "sustainable support for the charter school plan by teachers, parents, other community members and students" within the community where the charter school is to be located. 24 P.S. § 17-1717-A(e)(2)(i). "Sustainable support" has been defined by CAB as "support sufficient to sustain and maintain a proposed charter school as an ongoing entity." Bear Creek Community Charter School, CAB No. 2003-3; Ronald Brown Charter School, CAB Docket No. 1999-1. Sustainable support is "an inherent variable based upon the size of the proposed school, the size of the community and other factors." Environmental Charter School, CAB Docket No. 1999-4. Sustainable support is

The proper community to determine sustainable support is the school district in which the charter school is to be located. *Legacy Charter School*, CAB Docket No. 2000-14. The support documents, including petitions, must clearly identify that the signers or supporters are school district residents to be considered as evidence of sustainable support. *Dr. Lorraine K. Monroe Academy Charter School*, CAB Docket No. 2000-16.

In addition to the aforementioned concepts, charter schools are mandated to develop and implement strategies for meaningful parent and community involvement. 24 P.S. § 17-1715-A(2). Section 1719-A(8) requires applications to contain, *inter alia*: “[i]nformation on the manner in which community groups will be involved in the charter school planning process.” 24 P.S. § 17-1719-A(8). Whether or not an applicant has developed any community partnerships as of the time of the application is a valid consideration relating to its community support. *Duquesne Charter School Founding Group d/b/a Duquesne Charter School v. Duquesne City School District*, CAB Docket No. 2013-01, at 8, n.1 (hereinafter referenced as “*Duquesne Charter School*”).

The community support documents submitted for PCHS do not meet the requirements of the CSL, as interpreted by CAB and the appellate courts. Pursuant to CAB precedent and the CSL, the School Board has reviewed the record looking for evidence of support from the community where the Charter School would be located – the Pocono Mountain School District community and Pocono Mountain School District residents.
The Applicant intends to enroll 300 students in grades 9-12 in the first year of operation. Only 8 School District resident students were offered as interested pre-enrollees at PCHS according to the totality of pre-enrollment forms and on-line interest spreadsheet. Very few residents of the School District have signed petitions or submitted Support Statements for PCHS. Of those who signed the Petition, most are students who are already reflected in the pre-enrollments, or their parents/guardians. Only three individuals provided public comment to the School Board at the public hearings in support of the Charter School. The Applicant did not provide any support or partnerships from elected officials, community organizations or groups in Pocono Mountain for the creation of PCHS.

The Applicant did not provide any additional information to suggest that it has taken any steps taken to garner support in the Pocono Mountain community, from local officials or businesses or to develop partnerships or relationships with the arts community that would be integral in providing the internships, externships and other partnerships described in the Application. Given the fact that students enrolled in the Charter School will need opportunities for internships in the first year of the Charter School’s operation, should a charter be received, the Applicant’s repeated failure to establish contacts and partnerships in the Pocono Mountain community (particularly the arts community) is perplexing, and also a deficiency in the Application.

Reviewing all of the submitted evidence of community support in the aggregate, the Applicant has not met its burden of showing sustainable support for the proposed school from residents of Pocono Mountain School District and the Pocono Mountain community. The School Board finds that there is insufficient support for the Charter School’s intended enrollment of 300
students in 2020-2021 and for the overall charter school plan set forth in the Application as required by Section 1717-A(e)(2)(i) of the CSL.

**B. The Applicant Has Not Established That It Has Properly Planned To Provide Comprehensive Learning Experiences To Students Pursuant To The Adopted Charter.**

The CSL requires charter school applications 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). A review of the Application establishes that the Applicant has not demonstrated, based upon its support and planning, the capability of providing a comprehensive learning experience to students.

**Curriculum and Educational Program**

The CSL requires a charter 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). 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 areas will meet Pennsylvania standards, and how the applicant will deliver special education services to students with disabilities. *Bear Creek Community Charter School*, CAB Docket 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). For the following reasons, the Applicant has not fulfilled this burden.

“The curriculum of a school, any school, is one of the most significant building blocks of the educational program at that institution. To not have the curriculum completed and fully aligned shows a lack of adequate planning.” *Thomas Paine Charter School*, CAB Docket No. 2009-04, at
9. Section 4.4(a) of the State Board of Education regulations, 22 Pa. Code § 4.4(a), applies to charter schools. 24 P.S. § 17-1732-A, n.8. That regulation provides as follows: “It is the policy of the Board that the local curriculum be designed by school entities to achieve the academic standards under § 4.12 (relating to academic standards) and any additional academic standards as determined by the school entity.” 22 Pa. Code § 4.4(a). A curriculum is defined by the State Board of Education regulations 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. Planned instruction is defined as: “Instruction offered by a school entity based upon a written plan to enable students to achieve the academic standards under § 4.12 (relating to academic standards) and any additional academic standards as determined by the school entity.” Id.

A charter school applicant’s failure to submit curricular materials that establish the planned instruction required by the State Board of Education regulations for the grade levels to be served by the applicant is a basis for denial of the application. Allentown Engineering Academy Charter School v. Allentown School District, CAB Docket No. 2014-01, at 16-18. The charter school’s curricular plan must be fully developed at the time the application is filed. Environmental Charter School at Frick Park, CAB Docket No. 2007-05, at 6-7. In addition, the 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 Docket 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. Duquesne Charter School, CAB Docket No. 2013-01, 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 District*, CAB Docket No. 2016-02, at 33. The documents must establish a program that is fully aligned with 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.

The curricular materials submitted by an applicant must also address the nontraditional elements of the Charter School and how those elements will be integrated into the curriculum; failure to do so will render the curriculum insufficient. *In re Appeal of Community Service Leadership Development Charter School*, CAB Docket No. 2010-02, at 11 (citing *In re David P. Richardson Academy Charter School*, CAB Docket No. 2001-08). For example, where an applicant touted the use of hands-on learning outside the classroom, CAB expected to see lesson plans or instructional timelines to indicate where and how those themes and hands-on learning would be integrated into the charter school's education programming, and found fault with the applicant where the two lesson plans provided did not reflect any such hands-on learning outside the classroom. *Spartansburg Community Charter School, supra*, at 39. Further, if an applicant
represents that a theme will be integrated into the curriculum, evidence of such integration in the overall curriculum must be apparent from the curriculum maps or documents submitted. *Id.*, at 39-40.

The academic programming materials attached to the Application do not constitute a curriculum. These core subject area documents do not provide for a system of planned instruction that aligns with the Pennsylvania standards for any subjects or the grade levels to be served. The curricular documents submitted are course descriptions without any scope and sequence, assessments or indication of materials, resources and activities that would be used to address the course objectives. No curricular materials are submitted for physical education, family and consumer science, guidance, EL students or technology.

In terms of the artistic majors, which serve as the basis for the innovative programming that the Applicant suggests it will have, the Applicant’s submitted plan for instruction is woefully inadequate. Not a single curricular document has been submitted for Musical Theatre, Digital Arts or Instrumental Music. The document submitted for Dance, Vocal Music, Theatre and Visual Arts only include a listing of “Achievement Standards” that would be assessed without any additional information constituting “planned instruction” or a detailed assessment plan. No course listings or descriptions are provided for any artistic major other than figure skating. The only artistic major for which a comprehensive curriculum framework is provided is Figure Skating.

The Application does not provide any plan for how or when employees of the proposed charter school would prepare sufficient curriculum for every subject area (core subjects, electives and artistic majors) in grades 9-12 before the opening of the Charter School. Per the Timetable, staff (teachers or administrators) are not budgeted to begin before July 1, 2020, and the PDP and
school calendar do not provide for sufficient time to create the entire curriculum prior to the first
day for students in grades 9-12.

In terms of differentiation of instruction, the Applicant proposes to evaluate students’
artistic ability through an audition process at the time of enrollment. However, none of the rubrics
submitted contain any criteria or standards on which students will be assessed for placement into
courses within the artistic major that are differentiated based on beginner, advanced or some other
assessed skill level. In addition, the curricular documents submitted for the artistic majors do not
evidence any differentiation based on the skill level (beginner, advanced, etc.) to correlate with the
representations that students would be assessed for placement upon enrollment.

An additional material problem with the Application exists related to the lack of
information about graduation requirements for this Charter School that would begin with students
in grades 9-12 in year 1. The Application does not disclose how many credits a student would
need to graduate from PCHS and in what subjects; what the credit allotments are for any course;
or how many credits are required within the artistic majors versus the academic courses. In addition
to this important information for stakeholders being omitted, the Applicant does not address how
it would provide credit recovery opportunities for its newly enrolled transfer students in upper
grades if the number of credits required to graduate differed from other area school district
requirements. Given that 10th, 11th and 12th graders will be enrolled in year 1, the School Board
would have expected the Applicant to specifically address how such students would be
accommodated, or credit requirements adjusted, so that transfer students could assuredly have the
opportunity to graduate in 4 years. Had the Applicant proposed to open with 9th grade only and
add one new grade each year, the graduation requirement would not be an issue, but that is not
what the Applicant proposed.
The curricular documents and information submitted do not provide evidence that the Applicant is prepared to offer comprehensive planned instruction to fulfill the mandates of Chapter 4. See Bear Creek Community Charter School, CAB Docket No. 2003-3; Environmental Charter School, CAB Docket No. 1999-14.

**English Learners**

Charter schools are required to “provide a program for each student whose dominate language is not English for the purpose of facilitating the student’s achievement of English proficiency and the academic standard under § 4.12 (relating to academic standards). Programs under this section shall include appropriate bilingual-bicultural or English as a second language (ESL) instruction.” 22 Pa. Code § 4.26. On July 1, 2017, the Pennsylvania Department of Education reviewed and re-issued its Basic Education Circular (“BEC”) on *Educating English Learners (ELs)* pursuant to 22 Pa. Code § 4.26. The BEC on *Educating English Learners* states in pertinent part:

> The purpose of this circular is to provide local education agencies (LEAS) with the requirements and interpretations of the legal mandates governing the education of students who are English learners (ELs). The information included should be used in designing, staffing, and evaluating effective programs for ELs. These mandates and interpretations are based on the Pennsylvania Regulations, Chapters 4 and 11; and on federal law, including Title VI of the Civil Rights Act, the Equal Educational Opportunity Act (EEOA), the Elementary and Secondary Education Act (ESEA) as amended by the Every Student Succeeds Act (ESSA), and regulations and case law under those statutes.

BEC at 1.

ESSA was signed into law on December 10, 2015, and replaced NCLB. The ESSA requirements pertaining to ELs took effect on July 1, 2017.

Although the Application contains a narrative discussion regarding services to ELs, the Applicant has not taken steps to identify the specific instruction model(s) or research-based...
approach that it will implement to serve EL students. There is no evidence that any of the curricular documents have considered the English Language Development Standards (“ELDS”), that resources or program materials that would be used to teach the ELDS, or the explicit instruction that ELs would receive to ensure progress in their English proficiency. Other aspects of the LIEP are also deficient, as discussed in more detail in the Administration’s Report on PCHS 515-518.

These concerns are additional deficiencies in the Applicant’s planning because the issues evidence a lack of preparedness necessary to provide required English language instruction to ELs.

**Governance Structure**

A charter school must be organized and operated as a non-profit entity. 24 P.S. § 17-1703-A. To determine whether a charter school will be operated in accordance with the CSL, the appellate courts in Pennsylvania require a review of several different types of documents: the articles of incorporation filed by the applicant; the proposed Bylaws of the school; and the management agreement between the applicant and any proposed management company (if any). *Carbondale Area School District v. Fell Charter School*, 829 A.2d 400, 407-408 (Pa.Cmwlth. 2003).

The factual record identified above supports the conclusion that TLC would be providing management-type services to the Charter School, assuming TLC was hired to provide the services described by the Applicant. All of the services described by the Applicant – leadership staffing services, provision of vendors, curriculum provision, etc. – are management-type functions. In fact, if TLC would not be providing its proprietary programming, the Charter School would not be able to operate.
Pursuant to the Pennsylvania Supreme Court’s direction in *West Chester Area School District v. Collegium Charter School*, 812 A.2d 1172, 1185 (Pa. 2002), charter schools must be independent, nonprofit corporations, the operations of which cannot be controlled by management companies. A charter school cannot be a division or part of a management company, and a management company cannot have the power to bind or legally operate the charter school. Further, a management company cannot have any role or relationship with the charter school that substantially limits the charter school’s ability to exercise its rights. *Id.*

Under the CSL, arms-length transactions must occur between management companies and charter schools. As noted by the 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 Department of Education*, 162 A.3d 591, 598 (Pa.Cmwlth. 2017). The Commonwealth Court has determined that, where a charter school proposes to use a management company to provide services, a school board cannot grant a charter without the applicant submitting the finalized and executed management agreement for review. *School District of the City of York v. Lincoln-Edison Charter School*, 772 A.2d 1045, 1050 (Pa.Cmwlth. 2001).

Because proper review of a charter application cannot be had until the essential components of the application, such as a management agreement, are before the Board, the Board cannot grant a charter based on a ‘model’ agreement or promises that after negotiations it will comply with the law. Otherwise, the Board could grant a charter on the basis of a ‘model’ agreement that may be in conformity with the law while the actual agreement that is executed is not. *Id.; see also Learning Connection Charter School, CAB No. 2001-1.*

Here, the Applicant did not provide a contract with TLC and the Application did not even disclose what services TLC would be performing for PCHS. The failure to provide any description of the relationship and the failure to provide the actual contract does not enable the School Board
to perform a proper review of the relationship between TLC, Dr. Lubben as the Founder of the
school and the Charter Board. If the role of TLC is to ensure that the Charter Board, CEO and
staff maintain fidelity with the proposed model, then that responsibility raises questions as to the
power that TLC will wield over the Charter Board and the staff and whether the Charter Board
would retain ultimate authority to govern the operations of the Charter School and make decisions
that are in the best interest of the Charter School. Provision of a contract with appropriate language
might have rectified those concerns, but the Applicant has not supplied such a contract. This
failure is a deficiency in the Application.

Related to TLC, Mr. Wiltshire is proposed to offer services to the Charter School as an
employee of TLC and also continue to serve as an administrator at another charter school, EEACS.
Such a scenario would violate 24 P.S. § 17-1715-A(12), which prohibits a person who serves as
an administrator for a charter school from receiving compensation from another charter school or
from a company that provides management or other services to another charter school.

Another issue pertains to the Applicant’s failure to provide the AOI in the Application or
supplemental submissions. No excuse was provided for what the AOI, a required submission for
an application, were not provided in a timely manner. Because the AOI were not provided, it is
impossible to determine if the dissolution process referred to in the AOI complies with the CSL.

The Bylaws submitted with the Application contain problematic terms, including the
ability to remove trustees from the Charter Board “without cause” and inconsistencies with the
number of trustees identified in the narrative. There does not appear to be any reason for such a
“without cause” provision, and it raises concerns surrounding the independence of individual
members to make decisions for the entity and whether members who make unpopular or dissenting
votes or voice contrary opinions will simply be voted off the Charter Board. The “without cause” provision is not in accordance with the CSL or the operation of a public entity.

The Application also references an Executive Committee, but that is not one of the committees discussed in the Bylaws. If the Charter Board would have an Executive Committee, it raises concerns as to what authority the Executive Committee would wield when the Charter Board is statutorily required to hold the powers described in 24 P.S. § 17-1716-A.

The Application also references an “Advisory Committee” but such a committee is not reflected in the organizational chart or the Bylaws; due to the lack of information about the Advisory Committee, it is not known what powers the committee will have.

These issues reflect a lack of proper planning or lack of understanding of legal requirements governing the Charter School’s proposed operations and form additional bases for the denial of the Application.

**Financial Planning and Staffing**

A charter school’s financial planning is relevant to the determination whether the proposed school has the capacity to provide comprehensive learning experiences pursuant to Section 1717-A(c)(2)(ii) is the school’s financial planning. *Bear Creek Community Charter School*, CAB Docket No. 2003-3. A charter school is required to submit a budget that provides a sufficient basis from which to conclude that the charter school has considered fundamental budgeting issues and has determined that it will have the necessary funds to operate. *Thomas Paine Charter School*, CAB Docket No. 2009-04, at 12; *Voyager Charter School*, CAB Docket No. 2005-09. The budget must be complete, and much clearly identify a plan to address start-up expenses and the source of such funds. *New Castle Arts Academy Charter School v. New Castle Area School District*, CAB Docket No. 2014-14. Deficiencies in the budget submitted by the applicant can be grounds to

The factual findings contain a discussion of various errors or omissions found in the budget submitted by the Applicant in terms of staffing problems and inconsistencies, repayment of startup costs, various expenditure issues, and revenue assumptions. Based upon these errors and omissions, the Applicant will not have sufficient funds available to operate and implement its programming.

The lack of information provided about the Applicant’s facility planning and timetable raise additional questions and deficiencies that have not been answered through the information provided to date.

One important cost driver of the Applicant’s proposed financial plan is the provision of health care benefits to its employees. The CSL states as follows: “Every employe of a charter school shall be provided the same health care benefits as the employe would be provided if he or she were an employe of the local district.” 24 P.S. § 17-1724-A(d). In order to determine if the financial plan is viable and consistent with the requirements of the CSL for purposes of the Applicant’s planning, the Applicant must describe its health insurance coverage plans, and the School District must determine if those plans are consistent with the CSL’s “same health care benefits” provision. According to CAB, such a determination turns on the meaning of “health care benefits”, meaning what type of items or services are covered by the plan. *Gillingham Charter School v. Pottsville Area School District*, CAB Docket No. 2016-11, at 68. What another charter school in another part of the State might offer its employees in the way of health care benefits is not relevant to the determination of what health care benefits PCHS will offer, because the
determining factor under the CSL is what health care benefits the School District offers to its employees.

Due to the lack of information about potential plans and the proposed health care coverage, the proposal cannot be properly evaluated for coverage comparability to School District plans. The failure to provide health care coverage information precludes the School Board from evaluating whether the expenditures budgeted for employee health insurance are appropriate or sufficient in order to provide a comparable plan under Section 1724-A(d), which is another deficiency in the Applicant’s financial planning.

The Applicant also indicated that it did not intend to have its employees participate in the Public School Employees Retirement System (“PSERS”), but rather in an alternative retirement plan. The CSL states as follows: “All employees of a charter school shall be enrolled in the Public School Employees’ Retirement System in the same manner as set forth in 24 Pa.C.S. § 8301(a) (relating to mandatory and optional membership) unless at the time of the application for the charter school the sponsoring district or the board of trustees of the charter school has a retirement program which covers the employees . . . .” 24 P.S. § 17-1724-A(c) (italics added). Contrary to this provision, no alternative retirement plan to PSERS is currently in existence. In addition, no proposed plan documents were provided to evaluate. The Applicant references a “457 Plan” without any explanation for whether that type of plan could be approved by PSERS and without specifics of the plan details. Until such time as some alternative retirement plan is approved for the Charter School, the Charter School must participate in PSERS, and has not properly budgeted to do so.

The other budget and planning concern relates to school health services. Charter schools are required to comply with Article XIV-A of the Public School Code, which prescribes the health
services to be provided to students, including *inter alia*, health screenings and medical and dental examinations. 24 P.S. § 17-1732-A(a). The implementing regulations for the school health requirements under Article XIV-A are found in 28 Pa. Code § 23.1 *et seq.*

Every child of school age shall be given . . . (1) a vision test by a school nurse, medical technician or teacher, (2) a hearing test by a school nurse or medical technician, (3) a measurement of height and weight by a school nurse or teachers, who shall use the measurement to compute a child’s weight-for-height ratio, (4) tests for tuberculosis under medical supervision, and (5) any other tests as the Advisory Health Board may deem advisable to protect the health of the child. Vision tests shall be given at least annually and other tests at intervals established by the Advisory Health Board.

24 P.S. § 14-1402(a); see also, 28 Pa. Code §§ 23.4 (vision tests), 23.5 (requiring hearing test in grades 1, 2, 3, 7 and 11), 23.7 (requiring height and weight measurement by school nurse or teacher at least once annually).

“The school physicians of each district or joint board shall make a medical examination and a comprehensive appraisal of the health of every child of school age, (1) upon original entry into school in the Commonwealth, (2) while in sixth grade, [and] (3) while in eleventh grade . . ..” 24 P.S. § 14-1402(e); see also 28 Pa. Code § 23.2.

The Applicant’s budget does not reflect expenditures for a school physician to meet those requirements. Nor does the Applicant mention or reflect an understanding that more than nursing services are required by the applicable laws – the Charter School must also ensure that medical exams are provided to all students, should those students or their families fail to obtain such exams themselves.

For these reasons, the School Board continues to find that the budgetary and other planning by the Applicant is deficient.
C. The Application Does Not Provide or Consider All Of The Information Required Under Section 1719-A.

Section 1719-A of the CSL requires the charter applicant to include certain information in its application. The School Board finds that the Applicant has failed to properly include or address several items of information as required in this section of the CSL.


Concerns about the role of TLC and the Advisory Committee in the Charter School’s governance are discussed in detail above. In addition, additional deficiencies exist in terms of the number of Trustees called for in the Bylaws being inconsistent with the representations in the narrative, and the ability of the Board of Trustees to remove individual trustees without cause.


The School Board fully discussed its conclusions about the Charter School’s proposed curriculum and programming above and reiterates that the deficiencies fail to establish that the Charter School will provide comprehensive learning experiences to enrolled students or meet the requirements of Chapter 4.


The Applicant’s admission policy does not describe the lottery process that would be used should more applicants apply than seats exist.
4. **Section 1719-A(7) – Procedures Which Will Be Used Regarding The Suspension And Expulsion Of Pupils.**

The Applicant did not supply a Code of Conduct or other document that identifies what procedures will be used to discipline students who engage in various offenses, including due process protections for student facing suspension or expulsion. In addition to that deficiency, the narrative indicates that unexcused absences may be grounds for expulsion. The Public School Code prohibits all “schools”, including charter schools, from expelling or imposing out-of-school suspensions, disciplinary reassignments or transfers due to truant behavior. 24 P.S. §§ 13-1326, 13-1333(c).

5. **Section 1719-A(8) – Information On The Manner In Which Community Groups Will Be Involved In The Charter School Planning Process.**

Charter schools are mandated to develop and implement strategies for meaningful parent and community involvement. 24 P.S. § 17-1715-A(2). Section 1719-A(8) requires applications to contain: “Information on the manner in which community groups will be involved in the charter school planning process.” 24 P.S. § 17-1719-A(8). Whether or not an applicant has developed any community partnerships as of the time of the application is a valid consideration relating to its community support. *Duquesne Charter School*, CAB Docket No. 2013-01, at 8, n.1.

The Applicant did not provide any information about community partnerships or groups that support the Charter School’s plan. The lack of these relationships also preclude or hinder the Applicant’s ability to offer internships to students, so students who may be in 11th or 12th grade in those years will not have the same opportunities as students who may be enrolled in subsequent years.
Arts-affiliated groups and organizations are also supposed to be involved in the charter school planning process but the Applicant did not identify a single such group supporting the chartering of PCHS.

6. **Section 1719-A(9) -- The Financial Plan For The Charter School And The Provisions That Will Be Made For Auditing The School Under Section 437.**  

As explained more fully above, there are deficiencies in the Applicant’s financial planning.

7. **Section 1719-A(11) -- A Description Of And Address Of The Physical Facility In Which The Charter School Will Be Located, The Ownership Of The Facility, And The Lease Arrangements.**  

The Applicant disclosed a proposed location for the Charter School, along with lease arrangements in the Letter of Intent. As noted above, the lack of information provided about the Applicant’s facility planning and timetable raise additional questions and deficiencies that have not been answered through the information provided to date.

8. **Section 1719-A(13) -- The Professional Development Plan for the Faculty.**  

The Applicant’s PDP for the faculty is insufficient. No detail was provided about who would provide such professional development, the specifics of the topics to be provided or their priority, the resources that would be used or the knowledge and skills that would be addressed in order to implement curricular programs that meet the Pennsylvania standards set forth in Chapter 4 of the State Board of Education regulations and also assist the Charter School in the implementation of programming outlined in the application. This is particularly important in the first year of operation when all of the staff will be new and many, if not all, of the staff will not have experience implementing the unique curricular and educational focus of the school.  

Mandated trainings required of charter schools under Pennsylvania law, such as mandated reporter and suicide prevention, are not addressed in the PDP. *See* 24 P.S. §§ 12-1205.6, 15-1526. Also,
the PDP and school calendar do not reflect the representations in the Application regarding the type and scope of professional development to be offered to staff at the school.

The Application also fails to address a teacher induction plan or what opportunities would be provided to new teachers through the teacher induction program. 22 Pa. Code § 49.16. These are all deficiencies in the Application. See e.g., New Castle Arts Academy Charter School v. New Castle Area School District, CAB Docket No. 2014-14 (finding sufficient a professional development plan that contained topics, projects/outcomes, responsible parties and standards tied to the National Staff Development Council’s standards for staff development).


No information was supplied to identify how the charter school would provide appropriate liability insurance, workers compensation or other coverage, such as quotes from brokers or other documents indicating the potential costs for such coverage, including health care coverage, or whether those costs correlate with the expenditures included in the budget documents. While potential insurance coverage limits are proposed on PCHS 62, the Applicant did not provide any information from the broker setting forth projected costs to procure such coverage for the proposed school. Also, no plan documents for health care coverage were provided to evaluate whether the anticipated coverage meet the requirements of 24 P.S. § 17-1724-A(d).

D. The Record Does Not Establish That The Charter School Will Serve As A Model For Other Public Schools.

Pursuant to Section 1717-A(e)(2)(iv) of the CSL, the School District must evaluate the Application with regard to the “extent to which it will serve as a model for other public schools.” 24 P.S. § 17-1717-A(e)(2)(iv). “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)(iv) . . .” Spartansburg Community Charter School, supra, at 31 (citations omitted). Upon examination and evaluation of the deficiencies in the Application identified above, the School Board concludes that the proposed Charter School does not have the capacity to serve as a model for other public schools.


During the hearings, counsel for the Applicant objected to the School District’s denial of admission of supplemental documents that he attempted to introduce at the December 17, 2019 and February 3, 2020 hearings. (12/17/19 N.T. 12-21; 2/3/2020 N.T. 75-79). The School District had established a deadline for submission of all supplemental materials of December 3, 2019, which was acknowledged by the Applicant. The Applicant did not submit any supplemental documents by the December 3, 2019 deadline.

In accordance with Section 510 of the Public School Code, 24 P.S. § 5-510, the School Board has the authority to adopt and enforce reasonable rules and regulations as it may deem necessary and proper regarding the management of school affairs. One of the statutory duties of a board of school directors is the processing of charter school applications in accordance with the CSL. See, generally, 24 P.S. § 17-1717-A. While the CSL requires at least one public hearing to be held on an application and a vote to occur within a prescribed amount of time, the CSL does not define what must occur at the public hearing or address how the school board must review or process the application beyond those requirements. Here, the School Board took valid steps to adopt the Resolution filling in some of those gaps, including a deadline for submission of additional documents.
However, despite doing so, the School Board was not actually required to take official action to establish such a deadline. In fact, CAB has definitively stated that, "The CSL does not require a school district to accept additional documents from a charter school application after the application is submitted." In re: Education InnovationsLAB Charter School, CAB Docket No. 2007-01, at 9-10. A school district is not required to accept documents that it did not request. Id. at 10. Even though it was not required, the School District advised the Applicant, within two weeks of receiving the Application and a few weeks prior to the first hearing being held, that supplemental materials would not be accepted after a date certain, which was December 3, 2019. Said notice is consistent with the Resolution requirements and is not inconsistent with Policy 140 or the CSL.

Here, the School District went above and beyond what is required under the CSL. As definitively stated by CAB, the Application should have been complete upon submission to the School District. "It is clear that the intent of the Charter Law was to require that the applicant submit all information that it could produce that support its application at the time of the application." In re: Appeal of Denial of Charter for City College Prep Charter School, CAB Docket No. 2006-1, at 6. Despite this cautionary instruction by CAB, to ensure that the Applicant had notice that additional information would not be accepted as the hearing and review process moved forward, the School District gave the Applicant additional time to supplement the record. The Applicant chose not to submit any additional documents to the School District by the December 3, 2019 deadline. Had the Applicant submitted additional materials by the deadline, those would have included in the record.

For these reasons, the School District’s decision to establish and enforce a deadline for receipt of supplemental materials was entirely proper and in accordance with the law.

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ORDER

For the reasons set forth above, the Application to create the Pocono Charter High School for the Performing and Visual Arts is hereby DENIED.

Rusty Johnson
Board President