READING SCHOOL DISTRICT
BOARD OF SCHOOL DIRECTORS

IN RE: BERKS ARTS ACADEMY CHARTER
ELEMENTARY AND MIDDLE SCHOOL

2017 CHARTER SCHOOL APPLICATION

ADJUDICATION

The Board of School Directors ("Board") adopts this Adjudication regarding the 2017 Charter School Application ("2017 Application") filed with the Reading School District ("School District") by the applicants for the Berks Arts Academy Charter Elementary and Middle School ("Applicant", "Charter School" or "BAACEMS"). For the reasons that follow, the 2017 Application is denied.

I. Findings of Fact

1. On December 11, 2017, the Applicant filed the 2017 Application with the School District. (BAACEMS 1-1697).²

2. On January 8, 2018, the School District provided the Applicant with the Board-approved procedures that would be utilized with respect to the consideration of the 2017 Application; notified the Applicant that supplemental materials could be submitted by no later than January 11, 2018; and provided notice of a hearing scheduled for January 16, 2018, with a back-up date of January 18, 2018. (BAACEMS 1698).

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¹ The 2017 Application contains differing proposed names for the Charter School, as explained in more detail herein. For ease of reference, the charter school application currently under review will be referred to as the application for "Berks Arts Academy Charter Elementary and Middle School".

² The record for the 2017 Application will be referred to by reference to the Bates Stamped number beginning with the prefix "BAACEMS."
3. The Applicant did not submit any supplemental materials by the January 11, 2018 deadline or any time thereafter.

4. The hearing originally scheduled for January 16, 2018, was cancelled due to adverse weather conditions. On January 18, 2018, the Board held a public hearing on the 2017 Application. The public hearing was stenographically recorded.³

5. Other than the Applicant’s legal counsel, Brian Leinhauser, Esq., no one from the Applicant group appeared at the hearing. The Applicant did not request a continuance of the hearing.

Applications Filed with the School District by Thomas Lubben

6. Thomas Lubben (“Lubben”) is the “Founder” and designated representative of the Applicant according to the 2017 Application. (BAACEMS 1-2).

7. Different names are used to describe the name of the entity seeking a charter by way of the 2017 Application: “Berks Arts Academy Charter Elementary and Middle School” (see e.g. BAACEMS 1); “Berks Arts Academy K-8 Charter School” (see e.g. BAACEMS 2, 5, 8, 13, 22); “Berks Arts Academy Charter School” (see e.g. BAACEMS 1, 22, 24, 26, 80, 85); “Berks Arts Academy Elementary Charter School” (see e.g. BAACEMS 12, 30, 48); and “Berks K-8 Charter School” (see e.g. BAACEMS 167-168). Those differing names appear in various places throughout the entirety of the 2017 Application.

8. On August 6, 2015, Lubben filed an application (“2015 BAA Application”) with the School District for an entity to be called Berks Arts Academy Charter School (“Berks Arts”). (BAACS 1-590).⁴

³ The Notes of Testimony from the January 18, 2018 hearing will be referred to as “N.T. 1/18/18 at ___”.

⁴ The record in the 2015 BAA Application proceeding will be referred to by the Bates Stamped number beginning with the prefix “BAACS.”
9. The 2015 BAA Application proposed a performing arts charter school serving students in grades 6-12 to be located at the former Reading Central Catholic building at 1504 Hill Road and 1500 Eckert Avenue. (BAACS 4, 37-38, 53, 281, 639).

10. On November 24, 2015, the Board voted to deny the 2015 BAA Application, and adopted an Adjudication to support the denial ("2015 Adjudication"). The 2015 Adjudication identified deficiencies in the 2015 BAA Application in the areas of, inter alia, curriculum, community support, admission practices, services to special education students and English Language Learners ("ELL"), governance issues and financial planning and staffing.

11. The complete record created regarding the 2015 BAA Application contains the following documents:

   a. The 2015 BAA Application including all submitted attachments (BAACS 1-590);

   b. Supplemental materials submitted by the Applicant (BAACS 591-607);

   c. Handout provided by the Applicant at the public hearing, which was marked as Charter School Exhibit No. 1 (BAACS 608-623);

   d. The report issued by the School District administration, which was marked as School District Exhibit No. 1 (BAACS 624-649);

   e. August 27, 2015 letter from counsel for the School District to counsel for the Applicant (BAACS 650-654);

   f. Transcript from the September 15, 2015, hearing; and

   g. The 2015 Adjudication, along with November 30, 2015, letters to the applicant’s counsel and to Secretary Pedro Rivera regarding the denial and 2015 Adjudication.

13. The 2015 Revised BAA Application continued to propose the creation of Berks Arts, a performing arts charter school for students in grades 6-12 to be located at the former Reading Central Catholic building. (BAACS REV 43, 304-305).

14. On January 27, 2016, the Board voted to deny the 2015 Revised BAA Application, and adopted an Adjudication to support the denial ("2016 Adjudication"). The 2016 Adjudication identified similar deficiencies as those set forth in the 2015 Adjudication.

15. The complete record created regarding the 2015 Revised BAA Application includes the 2015 BAA Application record plus the following documents:

   a. The 2015 Revised BAA Application (BAACS REV 1-628);
   b. The School District administration's report (BAACS REV 629-655);
   c. January 8, 2016, letter to the Applicant's counsel regarding receipt of the 2015 Revised BAA Application (BAACS REV 656);
   d. January 19, 2016 letter to the Applicant's counsel regarding the administration's report (BAACS REV 657); and
   e. The 2016 Adjudication along with February 1, 2016, letters to the applicant's counsel and to Secretary Pedro Rivera regarding the denial and 2016 Adjudication.


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5 The record in the proceeding on the 2015 BAA Revised Application will be referred to by the Bates Stamped number beginning with the prefix "BAACS REV."
17. Following discovery and the filing of a motion for summary judgment, on March 10, 2017, the Honorable Timothy Rowley of the Berks County Court of Common Pleas dismissed Berks Arts’ Petition, finding that Berks Arts did not obtain the required 1,000 valid signatures to appeal, as required under the Charter School Law.

18. On April 6, 2017, Berks Arts filed an appeal from Judge Rowley’s denial of the Petition with the Commonwealth Court, pending before the Commonwealth Court at Docket No. 447 C.D. 2017. See docket sheet for No. 447 C.D. 2017, which can be found at https://njsportal.pacourts.us/DocketSheets/AppellateCourtReport.ashx?docketNumber=447+C.D.

19. The Commonwealth Court proceeding remained pending at the time the Applicant submitted the BAACEMS application. On January 19, 2018, the Commonwealth Court affirmed Judge Rowley’s opinion and order.

20. On July 26, 2017, Lubben filed another application with the School District, for an entity referred to by multiple names, including Berks Charter High School for the Performing and Visual Arts (“BCHS” with the application referred to as the “BCHS Application”). The BCHS Application proposed a charter school serving students in grades 9-12, also to be located at the former Reading Central Catholic facility.

21. On November 21, 2017, the Board voted to deny the BCHS Application, and adopted an Adjudication to support the denial (“BCHS Adjudication”). Because the BCHS Application was substantially similar to the Revised BAA Application and relied upon much of the same community support as the Revised BAA Application, the BCHS Adjudication identified similar deficiencies as those set forth in the 2016 Adjudication as well as additional deficiencies specific to the grade 9-12 proposal.
22. Because of the similarities between the founding group and the various applications submitted for Berks Arts, BCHS and the 2017 Application, as articulated in more detail throughout the instant Adjudication, the complete record reviewed by the Board for purposes of considering the 2017 Application contains the following documents:

a. The record for the 2015 BAA Application;
b. The record for the 2015 Revised BAA Application;
c. The record for the BCHS Application;
d. The 2017 Application including all submitted attachments (BAACEMS 1-1697);
e. The January 8, 2018 letter to the Applicant (BAACEMS 1698);
f. The report issued by the School District administration, which was marked as School District Exhibit No. 1 (BAACEMS 1698-1730); and
g. Transcript from the January 18, 2018, hearing.

General Information about BAACEMS

23. The Applicant seeks a five-year charter to operate, although the opening year of the school is not consistently referenced in the 2017 Application. The totality of materials in the 2017 Application, other than the cover letter from Lubben, reflect an opening date of September 2018.

24. Lubben’s cover letter states in pertinent part: “Also, please note, we were planning to submit this prior to November 15th for an opening in 2018, however, we were unable to meet that deadline. Therefore all references and charters to years will be for the years 2019-2024.” (BAACEMS 2).

25. At the hearing, the Applicant’s counsel represented that the Charter School would not open until the 2019-2020 school year because the Applicant did not file the 2017 Application by the November 15 deadline in order to open for the 2018-2019 school year. (N.T. 1/18/18 at 14).
26. For reasons undisclosed to the School District, the Applicant submitted the 2017 Application knowing that opening could not take place until the 2019-2020 school year due to the timing of the filing of the document, but then neglected to submit updated information in the 2017 Application that reflected the accurate opening in 2019-2020. For example, the proposed school calendar and the proposed Professional Development Plan are for the 2018-2019 school year. (BAACEMS 80, 169). The five-year budget show student-tuition driven revenue, and corresponding expenses, beginning in “2018”. (BAACEMS 160).

27. BAACEMS would open in the first year with the full complement of students in Kindergarten through grade 8 and remain with that grade structure throughout the term of the Charter. (BAACEMS 41-42; N.T. 1/18/18 at 16).

28. The proposed enrollment used by BAACEMS to meet budget expectations is 480 students in year 1. (BAACEMS 41-42, 160).

29. The proposed school calendar does not identify the proposed first day or last day of school or provide any details about the anticipated vacation or holiday schedule; as such, the calendar does not provide any assurances that the Charter School would provide 183 school days, as suggested. (BAACEMS 80).

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

Admissions and Enrollment Process

31. The artistic majors to be offered at BAACEMS are visual arts, vocal and instrumental music, dance, figure skating and theatre. (BAACEMS 17-19).

32. The 2017 Application makes a number of unclear or conflicting representations as to when students would be able to select arts majors and how many arts majors they might select. On
BAACE 15, the 2017 Application indicates that the programming for students in grades 5-8 will be more heavily focused on the arts with one or two majors for each student. However, on BAACE 16, the 2017 Application states that “children will have an opportunity to focus on two major interests in the arts from the six major offerings” “[a]fter completing three full years in the program”. Also on BAACE 16, the Applicant states that students entering the middle school component “will have to select one major and must audition for a position in that artistic department.” (BAACE 16).

33. It is not clear if students are able to select only one artistic major or two artistic majors. If two, the 2017 Application does not explain whether those majors would be taken simultaneously or at differing points in a student’s matriculation through the Charter School.

34. It is not clear if students have to be enrolled in BAACE for three full school years, regardless of entering grade level, prior to being assigned to one or more arts majors. Nor is it clear if students in grades 5-8 would be immediately assigned to one or more arts majors if they would be newly enrolled in the charter school in grades 5-8, or whether they would have to wait until completion of three full years in the program.

35. It is also unclear how the audition process for the artistic major(s) would work; whether there would be a limit on how many students could be enrolled in any one artistic major, and, if there would be limits, what affect those limits that might have on student enrollment and/or matriculation through the grade levels.

36. The Applicant did not supply any rubrics for the middle school audition process, and did not describe the audition process or scoring in the 2017 Application.

37. The Applicant did not supply an Admissions Policy, and the description of the admissions procedures in the 2017 Application do not identify an audition process or how admission decisions
or the lottery and wait list process might be impacted by the audition process. (BAACEMS 65-68).

38. When asked at the hearing about the process that would be followed for middle school students to choose artistic majors and be admitted into the majors, the Applicant’s counsel indicated he was “unfamiliar with the specifics of that process” and directed the Board to the application. (N.T. 1/18/18 at 18).

39. Similar issues were also deficiencies noted in the Adjudications supporting the denials of the Berks Arts’ and BCHS Applications.

40. “[T]he order to be eligible for admission,” parents must supply documentation including but not limited to: family information sheet, permission for field trip form, emergency contact form, photo and video authorization or denial form, family acknowledgement of receipt of the parent handbook and student transportation plan form. (BAACEMS 65-66).

Curriculum and Educational Program

41. The Applicant submitted a number of documents relating to the subject matter programming that would be offered at the Charter School for Kindergarten through 8th grade. (BAACEMS 176-1697). However, the documents that were submitted are not for the Charter School, and appear to be taken from a collection of third-party entities that either do not have a known or disclosed affiliation with the Applicant or do not reflect programming specific to a school to be located in Reading, Berks County, Pennsylvania.

42. At the top of the first page of documents addressing grades 6-8 are the words “The Berks Arts Academy Charter School”. (BAACEMS 176). Other documents bear the heading “Arts Academy Elementary Charter School” (see e.g. BAACEMS 218, 275, 278), which is an operating
charter school in Allentown according to the State’s School Performance Profile ("SPP") website, http://www.paschoolperformance.org/Profile/102789.

43. The English Language Arts curricular documents are for the Arts Academy Elementary Charter School and reference the unstated academic goals for that charter school, not BAACEMS. (See e.g. BAACEMS 278).

44. The “2016-2017 Scope and Sequence” for “Science Grade 1” is from the Houston Independent School District in Houston, Texas, and reflects Texas standards, not Pennsylvania standards. (BAACEMS 264-272).

45. The grade 5 social studies map references standards of the Southern Lehigh School District. (BAACEMS 1679). Other curricular documents reference “local” resources and connections that are not pertinent or appropriate for a school in Reading, Pennsylvania (as opposed to a school in Allentown or Bethlehem), such as Bethlehem Steel. (See e.g. BAACEMS 1659).

46. The School District’s administration concluded that the Applicant’s submitted curricular documents do not constitute a sufficient curriculum, usurp curricular documents from other entities without any indicated permission from those entities or correlation to their use in the education of Reading students, and also contain deficiencies when compared to the standards in place in Pennsylvania. (BAACEMS 1711-1716). The Board finds these conclusions to be credible based upon its review of the record and adopts them in their totality. By way of example and not limitation, the administration noted the following concerns with the curricular documents:

   a. The ELA, social studies and science curricular documents for various grades were developed for the students of Arts Academy Elementary Charter School (“Arts Academy”) located in Allentown, Pennsylvania.
b. Many of the online and license-based resources reflected in the Arts Academy curricular documents are not mentioned in the 2017 Application or budget for BAACEMS. In addition, the “District Common Assessments” reflected in the Arts Academy curricular documents were not supplied for review.

c. The science curricular documents are not aligned with the NEXT Generation Science standards. The Application state that an unknown science committee is in the process of updating the science curriculum to “embrace” the NEXT General Science standards (BAACEMS 273), but nothing was submitted as evidence of this claim or the status towards completion.

d. The 2017 Application contains printed out modules from the Pennsylvania Department of Education’s Standards Aligned Systems (“SAS”), which are model curriculum documents that establish a foundation for curriculum work. The Applicant had not revised the modules to fit the needs of the anticipated student body in BAACEMS, particularly in the area of math. Nor did the printed-out modules from the SAS website contain supports for English Learners (“ELs”) or students who struggle to meet grade level expectations or research-based interventions to use as resources.

e. The physical education curriculum was not complete for all grades.

f. Many of the web-based resources identified in the curricular materials are from outdated sources and are no longer available at the indicated pages.

g. “A concern that comes up often in the submitted curriculum documents is assumed experiences that Reading School District students have to complete the activities. For example, the activities or a water lesson ([BAACEMS] 1067) include students
‘will learn about a freshwater marsh, which is very common in our area’ and draw pictures, draw a picture of a pond they have visited, have students compare animals that live in eastern marshes. These activities are not conducive to the background knowledge and experience that urban students have encountered and there is no evidence of scaffolding supports. The reference to the common freshwater marshes in our area shows this is not written for students that reside in the city of Reading.” (BAACEMS 1713).

h. “Grade 3 Social Studies documents show continual references and relations to the Lehigh Valley Area in every unit of study. Some examples of this include, map lessons include reference to Geography of the Lehigh Valley ([BAACEMS] 1071) and assessments include designing a Lehigh Valley Travel Brochure ([BAACEMS] 1073). This document was clearly not developed for the students of the Reading School District.” (BAACEMS 1714).

i. None of the curricular documents reflect resources or learning experiences specific to Reading or Berks County and the unique characteristics of these areas.

j. The curriculum submitted does not contain courses that integrate the arts with the regular core subjects. The arts seem as if they are taught in isolation. There is no evidence presented in the curricular documents that the Applicant has integrated the arts into the core subject areas to “the greatest extent possible”, as represented in the 2017 Application narrative. (BAACEMS 12, 13).

k. With respect to the curricular documents for grades 6-8, the administration found as follows:

The middle school submission does not include a comprehensive curriculum framework as defined by the Pennsylvania Department of Education (PDE) with
respect to the [SAS] for the middle school grades. The course descriptions do not include a comprehensive plan to implement the Common Core Standards that were adopted by PDE in 2014 and expectations of what students should know and be able to do by the end of each course. The application is lacking the comprehensive curriculum that aligns with the PA Common Core Standards. The five Core Standards are simply listed for English Language Arts in the curriculum ([BAACEMS 177]); however, there is no clear plan of instruction or how to get students to meet those standards. Writing instruction and course rigor does not meet PDE expectations in each of the required writing areas. In addition to ELA and Math curriculum not being aligned to the Common Core Standards adopted in PA, the Science curriculum does not include the NEXT General Science Standards, which were released by the National Council of Science Teachers in 2011 and adopted by PDE in 2016. The Next Generation Science Standards include three dimensions: disciplinary core ideas, science and engineering practices, and cross cutting concepts.

The submitted curriculum for middle school for grades 6, 7 and 8 do not include a scope and sequence, defined assessments to monitor student progress, materials/resources and a clear plan of instruction of how students will meet the PDE standards in the middle school level for every subject area . . . .

The curriculum does not include coursework for special education and English Learners (EL) students or mention supports for these students in the regular curriculum.

The application lists standards for dance, music, theater, and visual arts. However, standards and curriculum topics are not a comprehensive curriculum framework . . . (BAACEMS 1715).

47. The 2017 Application contains multiple references to compliance with the No Child Left Behind Act, which was superseded by the Every Student Succeeds Act, effective prior to the submission of the 2017 Application. (See e.g. BAACEMS 10, 11, 21, 28, 30, 67, 1711).

**Education of ELs**

48. A description of the Applicant’s proposed programming for “English Language Learners” is contained on BAACEMS 26-30. The same description appears in the BCHS Application and the 2015 Revised BAA Application. (Cf: BAACEMS 26-30 with RSD 26-30 and BAACS REV 25-28).
49. The Board previously found the Applicant’s plan to serve ELs to be deficient. See 2015 and 2016 Adjudications and BCHS Adjudication.

50. The 2017 Application does not reference the Every Student Succeeds Act ("ESSA") or the revised Basic Education Circular issued by the Pennsylvania Department of Education on July 1, 2017, on Educating English Learners ("BEC"), and in fact continues to reference No Child Left Behind ("NCLB") in terms of the services that would be provided to ELs. (BAACEMS 28).

51. The terminology used by the Applicant in describing programming for students whose dominant language is not English is not consistent with the ESSA or the revised BEC.

52. As of January 2018, the School District’s EL population was over 25% of the overall enrollment and is continually growing. (BAACEMS 1727).

53. Wanda Gonzalez-Crespo, the School District’s Director of ESL, reviewed the 2017 Application and offered the following evaluation of the Applicant’s proposed language instruction education program ("LIEP"), which the Board agrees with and adopts as a factual finding:

1. **Educational Approach**: The LEA must select a sound educational approach for providing English language development and meaningful program participation for its students. Typically, an LIEP Program Plan includes acknowledgments, relevant laws and regulations, assurances of compliance with regulatory standards, and background information supporting the educational approach selected by the LEA. There is minimal information provided regarding the educational approach offered within the body of the application.

On page 28, the application refers to Title 22, Chapter 4, Section 4.26, but does not acknowledge the substantial changes that have occurred under Title III of the Every Student Succeeds Act. Throughout the application, multiple references are made regarding No Child Left Behind, which is now outdated. There is also significant information taken from the Basic Education Circular dated 2009, which is no longer in effect due to a revision that took effect on July 1, 2017.

Also on pages 28-29, there is a description of the intended educational approach however, there is not information regarding how this approach was selected based on the anticipated needs of their students or how the approach will ensure English language development and meaningful participation for its students in its education program. The Department of Education has made it very clear in their
revised Basic Education Circular that when English Language Development (ELD) courses are used as replacement instruction for an English Language Arts (ELA) credit, the ELD courses must address the grade level ELA standards in addition to the English Language Development Standards.

2. Identification: The LEA is responsible for identifying all students potentially needing ELD services. The LIEP plan should also address and describe the LEA’s procedures for identifying students who may be English Learners (ELs).

The application addressed identification of ELS on page 28. The LEA will administer the Home Language Survey with all students and it will be part of the students’ files, but there is no description of who will administer the surveys and what procedures will be followed to identify ELs. The Home Language Survey itself is only an initial screener. Additional data must be gathered through family interviews, review of records, etc. in order to determine whether the students need to be assessed using the formal screener designated by the Department of Education.

On page 28, the application states that, “A newly enrolled student without records will be screened for their ELP.” The new identification protocols from the Department of Education state that ALL students should undergo initial screening to gather information about language use in the home, the need for translation services for the parents, etc. This does not necessarily always lead to formal assessment, but is a necessary step in gathering vital information for programming and reporting purposes. PDE has released recently updated screening instructions on the department’s website. The application also does not specify who will be responsible for each step in the screening process, including formal testing. While the application does refer to the Pennsylvania Information Management System (PIMS) and LEP data systems on page 30, which are state-mandated reporting systems, the line on which they are mentioned is cut off and no further details are offered. Also, there is no mention of any data systems that will be used to: 1. gather and maintain documentation of their list of students whose primary home language is other than English (P:LOTÉ list), 2. store identification results, 3. share the data with teachers to determine the need for instructional supports, 4. track the progress of the students on an annual basis or throughout the school year to determine the effectiveness of programming or 4. (sic) track information regarding the required timelines for identification and parent notification as required by Title III. LIEPs rely on these data systems as part of their regular evaluation systems as well as for federal monitoring purposes.

3. Assessment: The LEA is responsible for assessing each identified potential EL student for English language proficiency.

On page 28, the WIDA ACCESS Placement Test (WAPT) is referred to as the assessment to be used for identification purposes, but it is no longer an allowable
assessment for students beyond Kindergarten. The PA Department of Education has replaced it with an updated screener.

The majority of the information regarding assessment appears to be focused on the WAPT for identification purposes, but there is little mention of the required annual assessment of ALL English Learners using the WIDA ACCESS 2.0, which is the most recent version of the ELP assessment and has been in place for the past two school years.

On page 29, the application contains an outdated statement regarding the exemption of students from formal ELP assessment. This exemption criteria is no longer in place and only ever applied to the initial screening of potential English Learners. Title III requires ALL English Learners, including those with disabilities, to participate in annual ELP assessments. There is no “opt out” provision or exemption from the annual ELP assessment.

4. Placement into Language Instruction Educational Program Services: The LEA is responsible for providing its ELL students with a program of services consistent with its chosen educational approach. An IEP Program Plan typically contains information that addresses in a comprehensive manner the methods to be used in providing EL students appropriate English language development services, as well as services to enable the students to benefit from the district’s academic and special programs.

Page 28 contains a list of outdated recommendations for program hours that PDE has not used for the past several years. In fact, the PDE no longer views ELD (English Language Development) instruction as a separate entity with a required number of instructional minutes. The most recent Basic Education Circular regarding the Education of English Learners states that, “ELD is a required component of all language instruction educational programs (IEPs). ELD takes place daily throughout the day for ELs and is delivered by both ESL teachers and non-ESL Teachers.”

Page 30 had a brief statement regarding curriculum alignment, but there was no evidence in the application demonstrating that the alignment was there. At a minimum, it would be expected that a scope and sequence from a standards-aligned ELD program would be included for each of the levels of ELD courses that would be offered and/or that the ELD standards would be integrated into the existing curriculum documents for each of the content areas. There is no mention of the resources or program materials that would be used to teach ELD.

On page 28, the application states, Tier III students “may receive their ESL instructional support as part of the 4-5 hour instructional day or after school for students who are able to stay without transportation issues if they choose.” Unfortunately, this statement indicates that there is some confusion about what ELD instruction is intended to accomplish. ELD is part of the student’s school
day. It is not an optional supplemental program that can be delivered afterschool. Students may certainly participate in supplemental programs that enhance the ELD instruction in an afterschool program, but that cannot be offered in place of the instruction they should be getting during the day.

With regard to students who are dually identified as both EL and special needs, there is some generic information on page 29 stating that the IEP team will include an ESL teacher and that the team will consider both the EL and special education needs of the student. However, there is no mention of how the services for these students will be coordinated. There is also no mention of how the school intends to evaluate students with limited English proficiency and how they intend to ensure that ELs are not being referred for evaluation solely on the basis of their English proficiency. There is no mention of ELs being included in a multi-tiered system of support that would help ensure that the only students who get evaluated for Special Education are those who truly have a disability.

5. **Staffing and Resources:** The LEA is obligated to provide the necessary resources to implement its educational approach.

Page 30 states that “teachers holding dual certification in a secondary content areas/elementary and an English Language Program Specialist K-12 will be employed by the charter school.” There are only 2 part-time ESL positions listed in the application, which are not specifically identified as teachers or paraprofessionals but they are budgeted at a total of $35,000 in year 1, which is less than a classroom teacher salary. The content areas are also not specified. There is also no mention of support staff, like bilingual paraprofessionals, who might provide students with targeted native language support in the classroom. These details must be carefully considered as the current EL population at Reading School District is over 25% of the overall enrollment and is continually growing. Consequently, it is a concern that there is no evidence of the proposed ESL staffing increasing over time as the population of the charter school increases. If the charter school’s EL population is even 15% of the total enrollment, that would equate to 72 ELs in year 1 alone based on a population of 480 students.

Page 30 of the application also states that “teachers will receive monthly professional development centered on highly effective practices in instruction of ELLs as well as Can-Do Descriptors.” However, the professional development plan contained in the application only mentions EL professional development during the months of July and August.

6. **Transition from EL Services:** The LEA is responsible for establishing criteria that determine when a student has sufficient English language proficiency to meaningfully participate in the educational program.
The criteria listed on pages 29-30 are no longer allowable under ESSA. The revised exit/reclassification criteria was published on the PDE website on July 1, 2017.

7. Monitoring: The LEA will ensure that students transitioned from the Language Instruction Educational Program have an opportunity to meaningfully participate in the education program.

The monitoring process is described on page 30 of the application, however, minimal details are provided. The newly revised exit/reclassification guidance provided by PDE states that students will be formally monitored for two years, but must be reported for four. The system for gathering monitoring data is not described, nor is there a description of the steps that will be taken when a reclassified EL struggles in mainstream classes.

8. Program Evaluation: The LEA will develop evaluation procedures to periodically evaluate and revise, if necessary, its Language Instruction Educational Program.

Program evaluation is addressed on page 30. “Program effectiveness is measured by the performance targets of the Annual Measurable Achievement Objectives (AMAOs), the accountability provisions set forth by Pennsylvania Department of Education (PDE) Bureau of Assessment and Accountability and Bureau of Teaching and Learning Support.” Unfortunately, the AMAOs are no longer in effect and have not been for the past few years. Under ESSA, accountability for the performance of ELs no longer falls under Title III AMAOs. It is now included under Title I under the State’s new Future Ready PA Index. Program evaluation will also occur through regular data submissions via the LEP System Report and other state-mandated data systems.

(BAACESEMS 1725-1728).

Professional Development

54. According to the 2017 Application, “[t]eachers will receive monthly professional development centered on highly effective practices in instruction of ELLs as well (sic) Can-Do Descriptors.” (BAACESEMS 29).

55. The 2017 Application also indicates that, as part of the school’s measurable non-academic goals and objectives to promote student performance: “[f]aculty will participate in professional
development that encompasses self-awareness knowledge of diversity, and the development of skills for working with diverse groups of students.” (BAACEMS 11).

56. The Professional Development Plan (“PDP”) attached to the 2017 Application is for “The Berks Arts Academy Charter School”, not for BAACEMS. (BAACEMS 169).

57. The PDP states that “in-service for staff will occupy from 5-10 days during the first summer”. (BAACEMS 169). 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.)

58. The 2018-2019 school calendar does not reflect any in-service, professional development trainings or other staff days in July 2018 prior to the start of school. No specifics are provided for when new teacher orientation or teacher in-service would occur prior to the start of the school year. (BAACEMS 80, 169).

59. The PDP and school calendar also do 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, as represented in the 2017 Application. (BAACEMS 80, 169).

60. The PDP does not address or reflect mandated trainings in the areas of mandated reporters, suicide prevention and teacher induction. Nor does the PDP identify what the outcomes for staff participation in the programs will be. (BAACEMS 169).

61. 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. (BAACEMS 169).

62. 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 (BAACEMS 169), the
document was not specific on what would be included in the “Curriculum Planning” training and which staff would be trained in that subject or by whom. Nor did the PDP and school calendar reflect the representations in the 2017 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.” (BAACEMS 67).

63. These deficiencies were also raised in the Adjudications addressing the prior Berks Arts and BCHS Applications.

**Suspension and Expulsion Procedures**

64. A Code of Conduct (“Code”) for “The Berks Arts Academy Charter School” is included in the appendixes. (BAACEMS 170-173). The Code does not mention any due process requirements for special education students; nor does the Court identify for students and their families what rights students possess under Chapter 12 related to suspensions and expulsions. Chapter 12 is referenced generally, but that description does not provide information to students and their parents about their specific rights and responsibilities.

65. The Code provides a sample list of student offenses that would result in disciplinary consequences ranging from cutting class and sleeping in class to molesting others and sexual harassment. The document does not provide a clear picture of what disciplinary consequences would occur for what offenses, such as a leveled consequence chart. (BAACEMS 1716-1717).

**Community Support**

66. The 2015 Adjudication, 2016 Adjudication and BCHS Adjudication raised lack of community support, respectively, for Berks Arts and BCHS as one of the bases for the respective denials.
67. The Applicant did not take steps to procure sustainable community support for the proposed new entity, BAACEMS. In the section where the Applicant is to “[d]escribe the relationship of your school with the surrounding community”, the Applicant did not identify any relationships that had been formed to date or any partnerships that would exist with any community entities. (BAACEMS 36-37).

68. No letters of support from individuals, community organizations, businesses or other entities are attached to the 2017 Application.

69. Eight individuals are identified as serving on the Founding Board for the Charter School. Of the 8 individuals, three are affiliated with TLC Consultants, including Lubben, Carlos Lopez and Aldo Cavalli. Of the remaining 5 individuals, only one individual has a Reading address. (BAACEMS 46).

70. In the section of the application to be used to identify community groups involved in the charter school planning process, the Applicant stated: “Our ADVISORY BOARD will be comprised by a variety of Art affiliated groups in BERKS COUNTY AND Reading. After the application submission, the Advisory Board will work with organized community groups in the planning of the charter school. Individuals from these groups with particular organizational skills and educational knowledge will be solicited to serve on the charter school’s Board of Trustees.” (BAACEMS 47). The Applicant, however, never identified a single community organization, group or individual involved in the charter school planning process, and did not identify anyone willing or interested to serve on the Advisory Board.

71. One individual, Michael Good, provided public comment in support of the Applicant at the January 18, 2018 hearing. (N.T. 1/18/18 at 12). Mr. Good was a proposed board member for Berks Arts and BCHS.
72. The Application template asks the Applicant to describe the unique demographic characteristics of the student population to be served, including primary languages spoken. (BAACEMS 42). In response, the Applicant did not address any demographic characteristics of the Reading community, other than its poverty rate. (Id.)

73. Notably absent from the 2017 Application is any discussion as to how the Applicant has or intends to equitably market the proposed charter school to Reading students of all demographics, including the Spanish-speaking population and ELs, the majority of whom are Spanish-speaking. For example, the Applicant has not included any recruitment materials in Spanish, and its admission policy does not address the inclusion of a Spanish version of an enrollment application or materials. Upon review of the Applicant’s website, all of the website documents for “Berks K thru 9 Arts Academy Charter School” are in English only, which is a significant concern considering the demographics of the School District. See http://www.berks-arts-charter-school-K-8.com/index.htm. (BAACEMS 1729).

74. Attached to the 2017 Application were community support documents consisting of (i) a spreadsheet of interested students; (ii) emails to berksartsacademy@gmail.com; and (iii) interest forms signed by prospective parents. (BAACEMS 94-133). These documents are addressed in more detail below.

75. Four emails were submitted to berksartsacademy@gmail.com. It is not clear what the emails purport to do but the students identified in the emails are included in the spreadsheet. Only two of the students are Reading residents. (BAACEMS 99-102).

76. With respect to the interest forms signed by prospective parents (BAACEMS 103-133):

   a. Thirty (30) non-duplicative forms were submitted.

   b. All of the forms say “Berks Arts Academy Charter School” at the top.
c. All of the students reflected in the interest forms are included in the spreadsheet.

(BAACEMS 94-98).

d. The forms ask parents to choose a grade span of K-4, 5-8 and 9-12.

77. In order to ascertain the accurate number of students identified in the spreadsheet residing in the School District who would be grade eligible for a K-8 school beginning in the 2019-2020 school year, the School District administration created a document that identified (i) all non-duplicative students (in alphabetical order) reflected in the totality of the Applicant’s interest forms, emails and the Applicant’s spreadsheet on BAACEMS 94-98; (ii) on what page(s) of each document their names appear;⁶ (iii) their address and school district of residence; (iv) the grade identified for the 2018-2019 school year in the various submissions; and (v) whether the student’s name appeared in pre-enrollment information in one of the prior applications. (BAACEMS 1700-1702). If the student was a Reading School District resident and is enrolled in a School District school, the spreadsheet also lists the student’s current grade in 2017-2018. (Id.) Based upon that review, the Board makes the following factual findings:

a. A total of 163 non-duplicative names of students appear in the documents.

b. Of the 163 students, 59 are residents of the School District based on the address provided. The rest are residents of other school districts in Berks County, Schuylkill County, Lebanon County and York County, some of which are beyond the 10-mile radius for school-district provided transportation. Three of the students listed in the Applicant’s spreadsheet live in New York City and one student lives in Arizona. An address was not provided for one additional student.

⁶ Duplicate names of students appear in the documents. To get an accurate picture of the information presented, the spreadsheet identifies each place the student’s name appears. For example, the third student listed in the spreadsheet with initials, S.A., is listed in the spreadsheet at BAACEMS 95, row 4 and BAACEMS 97, row 2, and also in an interest form found on BAACEMS 120.
c. Of the 59 School District residents, 34 appear to be grade eligible for 2019-2020 (i.e. projected to be in K-8 in 2019-2020 based on current enrolled grade in School District schools or based on grade information supplied by the Applicant, assuming it is accurate). Thirty-four (34) grade eligible students equates to 7% of BAACEMS’s needed enrollment of 480 students in year 1.

d. Grade levels were omitted for several students who are not residents of the School District.

e. Of the 104 students who are either not School District residents or for whom an address was not provided, 43 would be enrolled in 9th grade in the 2019-2020 school year based on a projected enrollment of 8th grade in the 2018-2019 school year, per the information in the Applicant’s spreadsheet. Assuming the Applicant’s representations are accurate, only 95 of the total 163 students would be grade eligible for 2019-2020 school year.

78. Not a single piece of community support documentation reflects the name “Berks Arts Academy Charter Elementary and Middle School”. All of the pre-enrollment information is for “Berks Arts Academy Charter School” or “Berks Arts Charter School K-8”. (BAACEMS 94-133).

Financial Planning and Staffing Issues

79. 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”. (BAACEMS 76).

80. In response to that section, in a chart, the Applicant identified the provision of school nursing services, growth screenings, vision screenings and immunization assessments.
The Applicant did not identify that any medical or dental examinations would be provided to students in any particular grade level or how the Charter School would provide for such examinations. (Id.)

81. The budget submitted does not identify any expenditures for a school physician or school dentist. (BAACEMS 160-166).

82. The Applicant proposes to have its employees enroll in an alternative retirement plan rather than participate in the Public School Employees Retirement System (“PSERS”). (BAACEMS 69-70). The alternative retirement plan does not currently exist, but is proposed to be a “457 plan” offered by PenServ. (Id.) However, no plan documents were provided with the 2017 Application, and the Applicant did not describe what the terms of the 457 Plan will be, including the proposed employer contribution.

83. Should the alternative retirement plan not be approved by PSERS, the Applicant will incur PSERS expenditures, which will adversely affect the budget by over $600,000 in year 1 alone. (BAACEMS 1708).

84. Regarding medical coverage, the 2017 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 Berks County School District. Employees will be responsible for the requisite level of co-pay and other obligations associated with the coverage.

We are working with the Equinox company, who currently provides health coverage for Lehigh Valley Charter Arts High School, Arts Academy Middle School and Arts Academy Elementary Schools. This is a first rate policy which offers an equivalent or better plan the Reading Area 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 School in Allentown.

(BAACEMS 69).
85. The 2017 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 Berks School District or in surrounding counties. Prescription, dental and vision plans will be matched up to plans offered to the Berks staff.” (BAACEMS 61) (italics added).

86. There is no such entity as the “Berks School District”, the “Berks County School District” and no such staff as the “Berks staff”. There are all references that were included in the Berks Arts and BCHS Application, and noted in the prior Adjudications. The Applicant continues to fail to address these errors in the current 2017 Application.

87. The Applicant did not attach a copy of any proposed health insurance policy (either a PPO, HMO or any other policy) and did not identify the scope of the coverage/benefits or the cost of the coverage. (BAACEMS 1707). The School District’s Chief Financial Officer (“CFO”) could not determine whether coverage and benefits would be the same as the School District’s coverage, but noted that the Applicant appeared to underestimate health care costs by approximately $135,000-521,000 per year based upon the amounts that the School District pays for coverage through the Berks County Trust. (BAACEMS 1707-1708)

88. The 2017 Application is replete with conflicting statements about the proposed class sizes at different grade levels. (Cf. BAACEMS 8, 13, 42, 67, 70) and the various positions that would be hired by the Charter School. If the lowest class sizes referenced in the narrative are correct, then the budget does not contain sufficient staffing to match the representations in the narrative. (BAACEMS 1707). The narrative also reflects the following positions that are not included in the budget expenditures – Executive Director, internal finance officer and Test coordinator. (Cf. 33, 49, 67, 70, 165).
89. The narrative indicates an anticipated special education population of 10%, but the year 1 budget reflects a 14.6% special education population of 410 regular education students and 70 special education students. (BAACEMS 160, 1705).

90. The staffing list on BAACEMS 33 indicates that, in year 1, the Charter School would hire 18 artistic specialists, 3 aides and 3 custodians. However, in the budget for year 1, only 16 artistic specialists, 0 aides and 2 custodians are included. (BAACEMS 165).

91. Two “ESL Staff (2 PT)” appear in the staffing breakdown throughout years 1-5. (BAACEMS 165-166). If the Applicant’s EL population mirrored the School District’s EL population of 25%, BAACEMS would be enrolling approximately 120 ELs in year 1 and 195 ELs by year 4. Even assuming the proposed school’s EL incidence might be less than the School District’s high schools, if the incidence was 15%, that percentage equates to 72 students in year 1 and up to 117 students in year 4 based on budgetary enrollment projections. One FTE ESL staff member, assuming that person(s) are even an ESL teacher, cannot provide legally compliant services to such a population of ELs.

92. The number of classroom teachers, special education teachers and ESL teachers does not increase incrementally with corresponding increases in the student population. The student population is supposed to grow, per the budget from 480 students to 540, 660 and 780 students between years 1-4. (BAACEMS 41-42). According to the budget, there is no increase in classroom teachers from year 1 to year 2, an increase in year 3, but then no increase in year 4. The number of special education teachers remains stagnant at 3 teachers from year 1 through year 5, even though the anticipated (and budgeted) number of special education students to be served rises from 70 students in year 1 to over 124 students by year 5. The number of ESL staff (2 PT) also remains stagnant at 1.00 from year 1 through year 5. (BAACEMS 165-166).
93. The budget does not clearly include any funds for the purchase or lease of musical instruments, or the payment of real estate taxes under the proposed triple net lease. (BAACEMS 167, 1709-1710).

94. Other budgeted expenditures that would have correlation with enrollment do not reflect consistent or sufficient increases or expenditures per the School District administration’s review. For example, only $30,000 is budgeted for special education services in years 1-3 and then $40,000 for year 4 and $45,000 for year 5. At an average of $34,000 per year, those expenditures equate to $344 per special education student per year, which would be insufficient to provide related services to students given the current rates charged in the Berks County area. (BAACEMS 161, 1708).

95. The revenue figures relied upon to balance the budget in year 1 and have an anticipated end of the year fund balance of $126,510 include a $500,000 bank loan, a $250,000 line of credit and fundraising of $10,000. (BAACEMS 161). The 2017 Application lacks evidence of any potential funding sources for those loans to the Charter School.

96. Food program costs are budgeted to remain flat at $150,000 per year over the five-year term, even though enrollment increases by 300 students. (BAACEMS 163, 1706).

97. The applicant did not include a startup budget or preliminary budget in the 2017 Application, despite indicating that it was doing so. (BAACEMS 54-55, 1705).

**Governance**

98. Articles of Incorporation (“AOI”), dated June 9, 2017, for the “Berks Arts Academy Charter Elementary and Middle School” are found at BAACEMS 174-175.

99. The address for the corporation’s registered office is 1504 Hill Road, Reading, PA 19602, which is the address for the former Reading Central Catholic building. (BAACEMS 174).
100. The dissolution process in the AOI states as follows:

Upon the dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by a Court of Competent Jurisdiction of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

(BAACEMS 175).

101. The Bylaws attached to the 2017 Application contain conflicting references to the entity covered by the Bylaws. On the cover page of the Bylaws, there are references to both “The Berks Arts Academy Charter School” and “The Berks Arts Academy K-8 Charter School”. (BAACEMS 134). No Bylaws were submitted for an entity to be called, “Berks Arts Academy Charter Elementary and Middle School”.

102. The Bylaws permit meetings of the Charter School’s Board of Directors to be held at places within or outside of Pennsylvania. (BAACEMS 141).

103. The Bylaws contain the following statement: “From time to time, the board may appoint individuals as Honorary Board Members. The appointment shall be made by 2/3 vote. A person may be appointed to be an honorary member who has shown outstanding dedication and leadership to the school, the community, or York city children . . . .” (BAACEMS 150) (italics added).

104. These Bylaws provisions mirror provisions in the Bylaws submitted in prior applications, which were raised in the 2016 Adjudication and BCHS Adjudication.

105. The 2017 Application states: “The BERKS ARTS ACADEMY ELEMENTARY CHARTER SCHOOL Advisory Committee will ensure that major school decisions are made in
according with the stated mission, vision, and goals of the school.” (BAACEMS 31). The 2017 Application never identifies who sits on the Advisory Committee or what the Advisory Committee’s role will be vis-à-vis the Charter School’s Board of Trustees,7 and the Advisory Committee does not appear on the organizational chart provided by the Applicant. (BAACEMS 49).

106. The lack of clarity over the proposed role of the Advisory Board was raised in the 2016 Adjudication and BCHS Adjudication, as was the lack of information as to who would sit on the Advisory Board.

107. Lubben is the founder of TLC Consultants, LLC ("TLC"). (See, e.g. RSD 277). He and two other TLC consultants serve on the Founding Board of BCHS. (BAACEMS 46).

108. The 2017 Application does not describe what services will be provided by TLC to the Charter School, and no contract between TLC and BAACEMS accompanied the 2017 Application. In previous proceedings for the other proposed schools, TLC’s role was described as follows: “They would be an assistant to the board of trustees, the operating board, in implementing the school’s model and act as consultants for the CEO and the staff and ensuring fidelity to the model as it’s been presented.” (See e.g., N.T. 9/7/17 at 66). TLC does not appear on the organizational chart for the Charter School. (BAACEMS 49).

109. In the section of the application where the proposed names and addresses of board members are provided, the Applicant included three individuals from TLC, including Lubben, and provided the following statement: “The above named Founders have indicated a willingness to serve on the Board of Trustees after we receive our charter. Recruitment for additional board members will be ongoing.” (BAACEMS 54).

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7 The organizational chart describes BAACEMS’s Board as a “Board of Trustees”, whereas the Bylaws reference the Board as a “Board of Directors”. (Cf. BAACEMS 49, 134-159).
110. The lack of clarity over the proposed role of TLC was raised in the 2016 Adjudication and BCHS Adjudication.

111. Consultant fees of $75,000 per year are included in the budget. (BAACEMS 161, 1708). According to BAACEMS’s counsel, those fees include fees for Lubben’s organization on the implementation of the model for the charter school, but he could not say how much. (N.T. 1/18/18 at 27).

II. Discussion

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:

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

2. The capability of the charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the adopted charter;

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

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

24 P.S. § 17-1717-A(e)(2); 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 2017 Application filed for the Charter School will be examined.

A. The 2017 Application Must Be Denied Because The CSL Does Not Permit The Filing Of Another Charter School Application While An Appeal From The Denial Of A Prior Application Is Pending.

Based upon the similarities in the applications submitted by Lubben and the Applicant's reliance on the Berks Arts' submissions as outlined in detail above, the Board concludes that BAACEMS is nothing more than a revised application for Berks Arts disguised as a new charter school application. Because Lubben and the Berks Arts' founding group were pursuing an appeal of the 2016 Adjudication at the time the 2017 Application was filed, the filing of a further revised application is improper under the law and must be precluded.

"A charter school may be established by an individual; one or more teachers who will teach at the proposed charter school parents or guardians of students who will attend the charter school; any nonsectarian college, university or museum located in this Commonwealth; any nonsectarian corporation not-for-profit . . .; any corporation, association, partnership, or any combination thereof." 24 P.S. § 17-1717-A(a). In this case, the persons seeking to establish BAACEMS are Lubben and the founding group identified in the 2017 Application. The non-profit entity, Berks
Arts Academy Charter Elementary and Middle School, was not established until Articles of Incorporation were filed on June 9, 2017, which means that the founding board/group was meeting to plan the filing of another application months before the new non-profit entity was even created. It is not BAACEMS that is applying for the charter, but rather a group of individuals that are seeking a charter for an entity that may ultimately be called BAACEMS.

Lubben and the founding group applied to start a charter school in Reading in August 2015, and after receiving the 2015 Adjudication denying that application, filed a revised application in December 2015. Such a filing is authorized under 24 P.S. § 17-1717-A(f). Following the Board’s denial of the revised application, Lubben and the Berks Arts’ founding group elected to take the required steps to file an appeal from the 2016 Adjudication.

Under the CSL, “in order for a charter school applicant to be eligible to appeal the denial of a charter by the local board of directors, the applicant must obtain the signatures of at least two per centum of the residents of the school district or of one thousand (1,000) residents, whichever is less . . . .” 24 P.S. § 17-1717-A(i)(2). “If the required number of signatures are obtained within sixty (60) days of the denial of the application, the applicant may present the petition to the court of common pleas of the county in which the charter school would be located.” 24 P.S. § 17-1717-A(i)(5). Under these procedural requirements, Berks Arts collected signatures and presented them to the Court of Common Pleas. Judge Rowley ultimately concluded that Berks Arts did not collect the requisite number of signatures. Instead of ceasing the appeal, Lubben and the founding group elected to appeal Judge Rowley’s decision to the Commonwealth Court, and the Berks Arts’ appeal remained pending at the time the instant 2017 Application was filed.

The CSL does not permit an applicant to take an appeal from a denial of a charter school application and then, while that appeal is pending, file a new charter school application with the
same school district. In effect, the applicant would be seeking two charters for one school. The General Assembly would not have authorized such an absurd result, which would also be a drain on taxpayer resources by forcing the school district to defend its decision on the first application and also expend resources on the processing of the new application. 1 Pa. C.S. § 1922(a) ("General Assembly does not intend a result that is absurd, impossible of execution or unreasonable"); Com. v. Allied Bldg. Credits, Inc., 123 A.2d 686 (Pa. 1956) (in construing a statute, the legislature is not presumed to have intended an absurd or unreasonable result and good sense and practical utility must be considered).

Here, BAACEMS is nothing more than Berks Arts dressed up with a new name and a few tweaks in the proposed operating plan. Because the Applicant elected to appeal the 2016 Adjudication, the Applicant was foreclosed from filing a new charter school application with the School District while the appeal was pending. For this reason, the 2017 Application is denied.

B. Alternatively, the 2017 Application Must Be Denied Because It Does Not Meet The Requirements of the CSL.

Notwithstanding the procedural inability of the Applicant to file another charter school application while an appeal remains pending on a prior application, alternatively, the 2017 Application must also be denied on its merits. The only community support documents produced are for Berks Arts; if Berks Arts is an entirely separate entity from BAACEMS, then BAACEMS cannot rely on the Berks Arts’ community support to meet the requirements of the CSL. Notwithstanding that contention, the BAACEMS community support is deficient under the CSL standards. In addition, the 2017 Application does not evidence proper planning to provide comprehensive learning experiences to students and does not provide evidence that the Charter School would serve as a model for other public schools. These issues are material grounds for denial of the charter.
i. **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 measured in the aggregate and not by individual categories. *Carbondale Area School District v. Fell Charter School*, 829 A.2d 400, 405 (Pa.Cmwlth. 2003). The appropriate measurement for sustainable support is against the initial opening and operation plan of the charter school. *Bear Creek Community Charter School*, CAB Docket No. 2004-2, at 6-7.

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”).

1. **The intent to enroll documents are for enrollment in Berks Arts.**

   In this unique situation, the Applicant did not bring forth any sustainable support for BAACEMS from Reading community members, elected officials, businesses, parents or students. All of the community support documents attached to the 2017 Application are for Berks Arts. The letter of intent forms are all on Berks Arts’ letterhead. Not a single parent or student has submitted any indication of a desire to enroll in BAACEMS, as opposed to Berks Arts. Only one Reading resident spoke in favor of the BAACEMS Application at the public hearing. Because the 2017 Application does not contain sustainable community support for BAACEMS, the 2017 Application must be denied.

2. **The evidence of support submitted does not establish sustainability from the Reading School District community.**

   Even if the Berks Arts’ community support were considered for BAACEMS, which the Board does not believe is proper under the circumstances here, the Board still finds that the community support documents do not meet the requirements of the CSL. As instructed by CAB, the Board has reviewed the record looking for evidence of support from School District residents. The Applicant budgets to enroll 480 students in Kindergarten through 8th grade in the first year of operation, which would be the 2019-2020 school year. Only 59 School District resident students were offered as potential pre-enrollees according to the totality of pre-enrollment or interest information, emails and the summary spreadsheet, and of those 59 students, only 34 are grade-eligible for the school in 2019-2020, which equates to 7% of the proposed year 1 enrollment.
Only one resident of the City of Reading sits on the founding group, and only 1 other Reading resident spoke in favor of the Charter School at the public hearing. Despite working for over four years to obtain support for a charter school in Reading, the Applicant did not provide any support or partnerships from elected officials, community organizations or groups in Reading, Pennsylvania, for the creation of BAACEMS (or Berks Arts or BCHS for that matter). All of these issues were raised in the 2015 and 2016 Adjudications, and apply equally, if not more so, to the 2017 Application.

The Applicant did not provide information to support steps taken to garner support in the City of Reading community, from local officials or businesses or to develop community partnerships or relationships. 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 Reading School District. The Board finds that there is insufficient support for the Charter School’s intended enrollment of 480 students in 2019-2020 and for the overall charter school plan set forth in the 2017 Application as required by Section 1717-A(e)(2)(i) of the CSL.

ii. 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 2017 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(c)(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 curricular materials submitted by the Applicant are deficient as set forth in more detail in the factual findings above. The documents do not reflect a locally developed curriculum and system of planned instruction for BAACEMS and the students that would be served at a charter school operating in the City of Reading. The curricular documents represent a mish-mosh of documents from third parties, none of which were designed specifically for BAACEMS or Reading (or even Berks County) students. Absent from all of the science documents are evidence of alignment with the NEXT Generation Science standards, and many of the other documents
failed to reflect complete alignment with the Pennsylvania Core standards in ELA and math. A comprehensive curriculum was not provided, in particular, for the middle school grades.

Another glaring deficiency is the lack of evidence of arts integration into the core subject areas, which had been promised in the narrative for all grade levels. The submitted curricular documents reflect stand-alone arts courses without the integration promised in the 2017 Application narrative. Further, the sample schedule contained in the narrative provided conflicting information on the number of instructional hours for core subject areas and arts courses – the narrative set forth an expectation of 3.5 hours of academics and 2.5 hours of artistic classes, but such expectations were not reflected in the sample daily schedule for K-4 or 5-8 either in terms of total instructional time or the time devoted to academics vs. artistic classes. (BAACEMS 30-31).

Based upon the deficiencies noted herein, 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. Prior to the submission of the 2017 Application, on July 1, 2017, the Pennsylvania Department of Education reviewed and re-issued its 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, prior to the submission of the 2017 Application. Despite these changes in the law, the Applicant chose to file the 2017 Application without taking steps to adjust the proposed programming and planning for services to EL students to reflect the changes in the law.

The 2017 Application does not contain any references to ESSA or the revised BEC. Nor does the 2017 Application address the updated standards set forth in ESSA or the revised BEC for the education of ELs. The explanation of the Applicant’s programming for ELs is out of compliance with applicable law in numerous ways, which are thoroughly delineated in the factual findings above.

Not only is the program planning in violation of applicable laws, but the Applicant’s staffing to serve ELs is also woefully deficient. Two part-time ESL staff members (as 1.0 FTE) will not be able to provide legally compliant services to ELs given the targeted student population. In the 2017-2018 school year, the School District’s EL population is at least 25% of total enrollment. Given the significant percentage of ELs in the targeted School District population, these concerns are additional deficiencies in the Applicant’s planning because they evidence a lack
of preparedness or awareness of staffing and programming 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 Board finds that insufficient information has been provided by the Applicant to ascertain whether TLC would be providing management services for the Charter School. The Commonwealth Court has determined that, where a charter school proposes to use a management company, 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 or otherwise explain what TLC would be doing for BAACEMS. The 2015 Revised BAA Application contained an unsigned contract with TLC that raised concerns over the authority of the Charter School’s board to manage the
relationship with TLC. See, 2016 Adjudication. The failure to provide a contract with the 2017 Application does not enable the Board to determine if any of the concerns raised in the 2016 Adjudication have been remedied. If the role of TLC is to ensure that the Charter Board, CEO and staff maintain fidelity with the proposed model, that responsibility raises questions as to the power that TLC will wield over the 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.

Another issue pertains to the dissolution process in the AOI for BAACEMS. The dissolution language violates the CSL, which requires all assets of a charter school to be distributed to the school districts of residence of students upon closure of the school. 24 P.S. § 17-1729-A(i).

No Bylaws have been submitted for BAACEMS, even though the AOI are for BAACEMS. Assuming the Bylaws are intended to reflect the manner in which BAACEMS would govern itself, the Bylaws contain two problematic provisions: (1) that meetings of the Charter School’s Board can be held outside of Pennsylvania; and (2) a reference to York City children. The latter appears to be a scrivener error or sloppy editing. The former provision violates the Sunshine Act, which requires residents of political subdivisions to have the ability to comment on matters of concern, official action or deliberation which are before the political subdivision. 8 65 Pa.C.S. § 710.1. Holding meetings outside of Pennsylvania would not permit residents to witness official action or comment on such matters, as required under the Sunshine Act.

The 2017 Application also references an “Advisory Committee” but such a committee is not reflected in the organizational chart or the Bylaws so it is not known what powers the committee will have. According to the narrative, the Advisory Committee “will ensure that major

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8 Charter schools are subject to the Sunshine Act, and can be sued to the same extent and upon the same condition that political subdivisions can be sued. 24 P.S. §§ 17-1714-A(a)(2), 17-1716-A(c).
school decisions are made in accordance with the mission, vision and goals of the school.” (BAACEMS 31). If that is accurate, the Advisory Committee would have a management function of the school and would usurp the role of the Charter School’s Board, which would be improper.

These issues also reflect a lack of proper planning or a lack of understanding of legal requirements governing the Charter School’s proposed operations and form additional bases for the denial of the 2017 Application.

**Financial Planning and Staffing**

An item that must be addressed in the application and which is relevant to the determination whether the proposed school has the capacity to provide comprehensive learning experiences pursuant to Section 1717-A(e)(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 must 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 reject an application under Section 1717-A(e)(2)(ii). *Bear Creek Community Charter School*, CAB Docket No. 2003-3.

As discussed in detail in the factual findings above, the staffing representations in the narrative are not consistently reflected in the budget documents, and the budget does not adequately and consistently reflect changes in staffing reflective of changes in the proposed enrollment in years 1-5. A school physician or dentist is not mentioned as an expenditure, and the
Application does not reflect, as applicable to a K-8 school, the requirement that medical examinations be conducted for all students upon entry into school and in 6th grade and the requirement that dental examinations be conducted for all students upon entry into school and while in 3rd and 7th grades. 24 P.S. §§ 14-1402(e) and 14-1403(a); see also 28 Pa. Code §§ 23.2 and 23.3. Staffing and expenditures for EL students and special education students are also deficient, as are other budget assumptions discussed in the factual findings.

One important cost driver of the Applicant’s proposed financial plan is the provision of health care benefits to its workers. 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 Commonwealth might offer its employees in the way of health care benefits is not relevant to the determination of what health care benefits BAACEMS has to offer, because the determining factor under the CSL is what health care benefits the local district offers to its employees. Such benefits will differ from school district to school district. Due to the lack of information about the proposed health care coverage, the School District’s CFO and the Board could not evaluate the plans for comparability to School District plans, but the CFO noted that the expenses budgeted called into question whether the plans would be comparable. The failure to
provide health care plan information precludes the 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. Similar deficiencies were noted in the 2015, 2016 and BCHS
Adjudications.

The Applicant also indicated that it did not intend to have its employees participate in the
PSERS, but rather in an alternative retirement plan. The CSL states as follows: “All employes 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. Until
such time as a 403(b) plan or some other plan is approved for the Charter School, the Charter
School must participate in PSERS, and has not properly budgeted to do so.

For these reasons, the Board finds that the budgetary planning by the Applicant is
deficient.

iii. The 2017 Application Did 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 Board finds that the Applicant has failed to properly include or address several
items of information as required in this section of the CSL.
1. **Section 1719-A(4) – The Proposed Governance Structure Of The Charter School, Including A Description And Method For The Appointment Or Election Of Members Of The Board Of Trustees.**

   The Board composition issues and issues with TLC are discussed in detail above.

2. **Section 1719-A(5) – Mission And Goals Of The Charter School, The Curriculum To Be Offered And The Methods Of Assessing Whether Students Are Meeting Educational Goals.**

   The 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.

3. **Section 1719-A(6) – The Admission Policy And Criteria For Evaluating The Admission Of Students Which Shall Comply With The Requirements Of Section 1723-A.**

   The Applicant supplied neither the admission policy nor the criteria for the evaluation of students for admission or placement into the art major(s) in accordance with 24 P.S. § 17-1723-A(b)(2), which states: “A charter school may limit admission to a particular grade level, a targeted population group composed of at-risk students, or areas of concentration of the school such as mathematics, science or the arts. A charter school may establish reasonable criteria to evaluate prospective students which shall be outlined in the school’s charter.” The Applicant did not include rubrics for the arts majors, so it is not known what the evaluation standards will be for students seeking admission into those majors.

   In addition, in terms of enrolling students, the 2017 Applicant identifies several documents required for enrollment which are not consistent with Pennsylvania legal requirements. Enrollment of a student cannot be denied or delayed simply because some of the forms have not been submitted. The only information on which enrollment can be conditioned in Pennsylvania
are proof of the child’s age, immunizations required by law, proof of residency, home language survey and parent registration statement. See Basic Education Circular, Enrollment of Students, found at http://www.education.pa.gov/Documents/Codes%20and%20Regulations/-
Basic%20Education%20Circulars/Purdons%20Statutes/Enrollment%20of%20Students.pdf.

4. **Section 1719-A(7) – Procedures Which Will Be Used Regarding The Suspension And Expulsion Of Pupils.**

The Applicant’s Code of Student Conduct is for Berks Arts, not BAACEMS. (BAACEMS 170). Notwithstanding the fact that the Code is for a different school, the Code does not identify to students and their parents what due process protections are required under Chapter 12 for all students and what due process protections are required under the applicable special education laws for special education students. The Code does not delineate the disciplinary consequences for a range or level of offenses, resulting in uncertainty over the potential consequences depending on the severity of the offense.

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. Arts-affiliated organizations are also supposed to be
involved in the charter school planning process but, again, the Applicant did not identify a single such group – from the City of Reading or otherwise – supporting the chartering of BAACEMS.

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(12) – Information On The Proposed School Calendar For The Charter School, Including The Length Of The School Day And School Year Consistent With The Provisions Of Section 1502.**

The proposed school calendar submitted with the 2017 Application reflects an opening date in the 2018-2019 school year, which is not accurate. The Charter School would open in the 2019-2020 school year. Further, the calendar submitted does not provide specific information on the proposed length of the school year.

8. **Section 1719-A(13) – The Professional Development Plan For The Faculty.**

The Applicant’s PDP 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 required in its 2017 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 2017 Application regarding the type and scope of professional development to be offered to staff at the school.

The 2017 Application did not address a teacher induction plan or address what opportunities would be provided to new teachers through the teacher induction program. 22 Pa. Code § 49.16. These are all deficiencies in the 2017 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 a broker was identified and coverage limits proposed, 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 they meet the requirements of 24 P.S. § 17-1724-A(d).

C. The Extent To Which The Charter School May 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 2017 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 2017 Application identified above, the Board concludes that the proposed Charter School does not have the capacity to serve as a model for other public schools.

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ORDER

For the reasons set forth above, the 2017 Application to create the Berks Arts Academy Charter Elementary and Middle School is hereby DENIED.

Brian Buerke,
Board President