

**BOARD OF EDUCATION
THE SCHOOL DISTRICT OF PHILADELPHIA**

In the Matter of:

Charter Nonrenewal Proceeding Regarding
Olney Charter High School

HEARING OFFICER'S REPORT

The Hearing Officer submits this report regarding the hearing conducted in this matter, together with the attached findings of fact, conclusions of law, proposed adjudication and certification of the record.



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HEARING OFFICER’S REPORT

The Hearing Officer submits the following report regarding this nonrenewal proceeding by the School District of Philadelphia (“School District”) Olney Charter High School, also known as Olney Charter High School, Inc.: An ASPIRA, Inc. of Pennsylvania School, (“Olney”).

I. PROCEDURAL POSTURE

On December 14, 2017, the School Reform Commission of the School District of Philadelphia (“SRC”)¹ adopted Resolution SRC-8 (“SRC-8”),² which resolved to conduct a public hearing regarding a recommendation by the School District’s Charter Schools Office (“CSO”) not to renew Olney’s charter.

Resolution SRC-8 listed 37 grounds for the proposed nonrenewal (not including numerous subparagraphs), including low proficiency rates on Keystone exams, poor School Performance Profile scores, failure to meet academic growth standards, failure to meet Annual Measureable Objectives, poor graduation rates, poor federal accountability designations, failure to meet commitments in its charter, failure to meet program requirements for English language learners, noncompliant student admission policies, failure to meet Renaissance targets regarding

¹ On July 1, 2018, the Board of Education (“BOE”) replaced the SRC and became its successor with respect to this proceeding. *See* 24 P.S. § 6-696(n) (“after dissolution the board of school directors shall have the powers and duties of the School Reform Commission”).

² *See* Ex. JE[O] 1. (See footnote 8 below for an explanation of how the exhibits are cited in this report.)

student retention and violent incident rates, failure to comply with student expulsion requirements, failure to identify actions that could lead to in-school alternative placement, failure to meet student attendance commitments, failure to operate in accordance with bylaws and applicable law, failure to meet Highly Qualified Teacher requirements, failure to meet certification requirements for special education instructors, untimely issuance of audited financial statements, failure to make required payments to the Public School Employees' Retirement System, and failure to meet generally accepted standards of fiscal management and audit requirements.³

Resolution SRC-8 also authorized the appointment of a hearing officer for this proceeding, pursuant to which I was appointed by the BOE on December 5, 2018.⁴

After a series of pre-hearing delays,⁵ the hearings in this matter and a separate matter regarding John B. Stetson Charter School ("Stetson") were interspersed on March 12, 13, 15, 18, 19, 20, 25, 26, 27 and 29, and April 2, 8, 9, 10, 12 and 15, 2019 (because the witnesses and testimony substantially overlapped).⁶ In addition, the parties agreed that relevant portions of the

³ See Ex. JE[O] 1.

⁴ See Ex. HO[O] 1.

⁵ On December 19, 2018, the hearing was scheduled for February 12, 2019 (and subsequent dates) by agreement of the School District and Olney. Then on February 4, the start date was postponed until February 19 to accommodate conflicting court appearances by Olney's previous Counsel. Olney then terminated its previous Counsel on February 7. To accommodate Olney's current Counsel, the hearing was rescheduled on February 11 to start on March 11, 2019. Then on March 8, the start date was changed by agreement of Counsel to March 12, 2019, to allow time for review of additional exhibits.

⁶ Because there was substantial overlap between the witnesses called in this hearing and those called in the Stetson hearing, and because some of the witnesses were called out of order to accommodate their schedules, the parties agreed to include all of the testimony for both hearings in a single set of transcripts, which are cited here as "Tr. vol. [#], at [page(s):lines(s)]." (See Tr. vol. 13, at 4:3-5:1.)

Olney and Stetson records could be incorporated and relied upon in either proceeding.⁷

The School District called the following witnesses in its cases against Olney and Stetson (collectively, the “Charter Schools”): Peng Chao (the CSO’s senior director), Roger Kligerman (the CSO’s director of quality and accountability), Nicholas Spiva (the CSO’s assistant director of accountability), Timothy Hanser (the CSO’s assistant director of finance and operations), and Mayer Krain (an auditor two in the School District’s Office of Auditing Services (“OAS”)).

Olney called the following witnesses in its defense: Lillian English-Hentz (an Olney board member and a student’s grandparent), Sheila Rodriguez (a student’s parent), Carmen Camacho (a student’s parent), James Thompson (Olney’s principal), Ellen Green (Olney’s vice principal), Thomas Darden (the chief operating and innovations officer of Olney’s management company, ASPIRA, Inc. (“ASPIRA”)), Daniel LaSalle (Olney’s ninth grade assistant principal), Yeslli Ann Hernandez (a Spanish teacher at Olney), Xin Yi (ASPIRA’s controller), Gary Samms (a partner at the law firm of Obermayer, Rebmann, Maxwell & Hippel, LLP), Alexander Schuh (the founder and executive director of School Frontiers LLC), Natalie Hoffa (a paralegal at the law firm of Latsha, Davis & McKenna), and all of the witnesses previously called by the School District (as on cross-examination).

Stetson called the following witnesses in its defense: Gary Samms, Thomas Darden, Thomas E. Mullin (Stetson’s principal), Joanne Esquilin (Stetson’s community outreach coordinator), Hedyanne Vallines (a student’s parent), Yubelkis Soto (a student’s parent), Debra Williams (a student’s parent), Joely Sanchez (three students’ parent), Maria Sanchez Ortiz (three students’ grandparent and five former students’ parent), Alexander Schuh, Glenda Marrero (Stetson’s assistant principal), Jeanette Rodriguez (Stetson’s lead administrative assistant), Xin

⁷ See Tr. vol. 4, at 305:6-308:8; Tr. vol. 5, at 32:23-33:23; Tr. vol. 10, at 4:17-23.

Yi, Natalie Hoffa, and all of the witnesses previously called by the School District (as on cross-examination).

The following exhibits⁸ were admitted into evidence: Ex. JE[O] 1-108; Ex. SD[O] 3, 4, 6, 8-19, 22-26, and 29-33; Ex. Olney 19-23, 28, 32-34, 37-39, 41-44, 47, 49-50, 53-55, 57-59, 61-68, 70-71, 73-88, 90-92, 94-97, 100-101, 108-118, 122-125, 153-155, 166, 175-178, 184-187, 190, 205, 207, 209, 214-215, 217-220, 227-230, 233-234, 237-238, 248-253, 255, 258, 269, 281-282, 284-290, 292, 294-296, and 300; Ex. JE[S] 1-92; Ex. SD[S] 5-12, 15, 17-19, and 21-27; and Ex. Stetson 4-5, 15, 22-23, 26, 27, 29, 31, 33-37, 41, 43-44, 46-51, 55, 57-73, 76-88, 91-92, 94, 96-100, 102-107, 111-114, 131, 135, 138, 145, 151-153, 165, 172-175, 186, 197-202, 208-211, 214-215, 218-219, 230-234, 236, 239, 255, 257, 258 259-264, 266, 268-273 and 277.

Public comments were then solicited by the BOE from April 22, 2019 through May 21, 2019,⁹ in response to which 140 individuals submitted 141 comments in the Olney matter, and 88 individuals submitted 114 comments in the Stetson matter (approximately half of which were part of an electronic petition).¹⁰

⁸ Some of these exhibits were admitted in part or only for certain purposes, and other exhibits that the parties exchanged were not offered into evidence or were excluded based on well-founded objections, as specified in the Certification of the Record submitted in both matters. The exhibits were numbered separately in each case, so to avoid confusion, it is necessary to distinguish the exhibits from different exhibits with the same numbers in the other case. Accordingly, with respect to the exhibits submitted in the Olney matter, joint exhibits are cited here as Ex. JE[O] 1-108, School District exhibits are cited as Ex. SD[O] 1-33 and Olney exhibits are cited as Ex. Olney 1-300. Similarly, with respect to exhibits submitted in the Stetson matter, joint exhibits are cited as “Ex. JE[S] 1-92, School District exhibits are cited as Ex. SD[S] 1-28 and Stetson exhibits are cited as Ex. Stetson 1-277. Additional Hearing Officer exhibits are also included to complete the record, which are cited as Ex. HO[O] 1-125 and Ex. HO[S] 1-131.

⁹ See Ex. HO[O] 104; Ex. HO[S] 106.

¹⁰ See Ex. PC[O] 1-143; Ex. PC[S] 1-58.

On June 11, 2019, the parties submitted their proposed findings of fact and conclusions of law, and supporting memoranda of law.¹¹

After preparing drafts of this report and its attachments, I was asked to defer their finalization, submission and service pending the outcome of attempts to negotiate an amicable resolution.¹² On September 18, 2019, I was advised that the negotiations were unsuccessful.

Accordingly, this matter is ripe for decision.

After carefully considering the evidence submitted, the positions of the parties and the public comments received, I recommend that Olney's charter *not* be renewed, because Olney has failed to comply with material provisions of its charter, failed to meet applicable requirements for student performance, failed to comply with generally accepted standards of fiscal management and audit requirements, and violated applicable laws from which it has not been exempted. *See* 24 P.S. § 17-1729-A(a).

My reasons for this recommendation are further explained below, and are based upon the Findings of Fact and Conclusions of Law submitted with this report.

II. GROUNDS FOR NONRENEWAL OF OLNEY'S CHARTER

Pennsylvania's Charter School Law ("CSL") provides the following pertinent grounds for nonrenewal or revocation of a charter:

(1) One or more material violations of any of the conditions, standards or procedures contained in the written charter signed pursuant to section 1720-A.

(2) Failure to meet the requirements for student performance set forth in 22 Pa. Code Ch. 5 (relating to curriculum) or subsequent regulations promulgated to replace 22 Pa. Code Ch. 5 or failure to meet any performance

¹¹ *See* Ex. HO[O] 112-115; Ex. HO[S] 118-121. Olney and Stetson also submitted three new motions, which were responded to and ruled on separately, but are also summarized in Sections III.H.6 and III.H.7 below. *See* Ex. HO[O] 116-123; Ex. HO[S] 122-129.

¹² I did not disclose any information to either party regarding my drafts, and the only information disclosed to me regarding the negotiations was the fact that they were occurring.

standard set forth in the written charter signed pursuant to section 1716-A.

(3) Failure to meet generally accepted standards of fiscal management or audit requirements.

* * *

(5) Violation of any provision of law from which the charter school has not been exempted, including Federal laws and regulations governing children with disabilities.

24 P.S. § 17-1729-A(a); *see also, Discovery Charter Sch. v. School Dist. of Phila.*, 166 A.3d 304, 317-18 (Pa. 2017).¹³

The BOE “may” choose not to renew a charter on any of the listed grounds. *See* 24 P.S. § 17-1729-A(a).

“When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.” *Discovery Charter Sch.*, at 316.

To support such a nonrenewal, the School District has the burden to prove the asserted grounds by “a preponderance of the evidence.” *See Delaware Valley Charter High Sch. v. School Dist. of Phila.*, CAB No. 2016-06, at 27 (June 8, 2017); *Imani Educ. Circle Charter Sch. v. School Dist. of Phila.*, CAB No. 2014-08 at 25 (May 11, 2016) ; *Graystone Acad. Charter Sch. v. Coatesville Area Sch. Dist.*, CAB No. 2012-01, at 38 (Aug. 2, 2013) (“*Graystone (CAB)*”).¹⁴ This burden is satisfied if “the evidence demonstrates a fact is more likely to be true than not to be true, or if the burden were viewed as a balance scale, the evidence in support of the proponent’s case must weigh slightly more than the opposing evidence.” *Id.* In addition, “the reasons for terminating a charter must be compelling in the sense that a charter school’s

¹³ The grounds are the same for both nonrenewal and revocation, as are the procedural requirements. 24 P.S. § 17-1729-A. Thus cases involving one or the other apply to both.

¹⁴ Decisions of the Pennsylvania Department of Education’s Charter School Appeal Board (“CAB”) are cited here as “CAB No. [docket number] ([date])” and are available at http://www.education.pa.gov/K-12/Charter_Schools/Pages/CAB-Decisions.aspx. When both CAB and appellate court decisions are cited for the same case, short citations will specify the tribunal to avoid confusion (i.e., “*Graystone (CAB)*” or “*Graystone (Cmwlth.)*”).

violations of the terms of its charter or the CSL are significant, material and fundamental.” *See Renaissance Charter Sch.*, CAB No. 2008-07, at 3 n.3 (Apr. 14, 2009).

As set forth more fully below, the School District has met these requirements with respect to each of the asserted grounds for nonrenewal, because Olney has failed to comply with material provisions of its charter, failed to meet applicable requirements for student performance, failed to comply with generally accepted standards of fiscal management and audit requirements and violated applicable laws from which it has not been exempted; and because these violations were sufficiently significant, material and fundamental to warrant nonrenewal.

A. Material Violations of Charter Standards and Conditions

The CSL makes clear that a “written charter . . . shall be legally binding on both the local board of school directors of a school district and the charter school’s board of trustees.” 24 P.S. § 17-1720-A(a); *Discovery Charter Sch.*, at 319 (quoting 24 P.S. § 17-1720-A(a)). Moreover, “the information in the charter school application is intrinsic to the charter and is essentially the heart of the charter school” because “the charter school application is required by the Charter School Law to be extremely detailed and specifically identify the manner in which the charter school will operate (*see* 24 P.S. § 17-1719-A) and because the information contained in the charter school application eventually becomes part of the charter itself” *Thurgood Marshall Acad. Charter Sch.*, CAB No. 2001-5, at 11 (Jan. 15, 2002). Accordingly, “the charter school is required to comply with the terms and conditions of the charter, as well as the information contained in the charter school application, which is incorporated into the charter.” *Truebright Science Acad. Charter Sch. v. School Dist. of Phila.*, CAB No. 2013-11, at 15 (Jan. 8, 2015) (“*Truebright (CAB)*”) (citing 24 P.S. §§ 17-1720-A, 17-1729-A(a)(1)).

For these reasons, a charter school’s failure to meet a performance requirement in its charter is a valid ground for nonrenewal under 24 P.S. § 17-1729-A(a)(2). *Truebright Science*

Acad. Charter Sch. v. School Dist. of Phila., 115 A.3d 919, 922 (Pa. Cmwlth. Ct. 2015) (“*Truebright (Cmwlth.)*”); *Graystone Charter Sch. v. Coatesville Area Sch. Dist.*, 99 A.3d 125, 139 (Pa. Cmwlth. Ct. 2014) (“*Graystone (Cmwlth.)*”).

1. Olney failed to meet charter conditions for Renaissance Schools.

Olney is not a traditional charter school. It received a charter only because ASPIRA (a) applied to be a turnaround team as part of the School District’s Renaissance Schools Initiative, and (b) promised to comply with the Renaissance Schools Policy, the expectations in the School District’s request for proposals, and the CSL. A Renaissance charter was then executed by the parties reflecting those conditions. But for the School District’s decision to seek out operators to take over its own schools, Olney would have no right to exist, or to operate out of a building that the School District owns and previously used to house the former Olney East and Olney West High Schools.

The “minimum” expected outcomes included “[i]mprovement in student academic achievement for all students, including English Language Learners and special education students . . .” and “[i]mplementation of instructional practices that will transform schools into high achieving learning environments.”¹⁵ ASPIRA knowingly and voluntarily applied to turn around low-performing schools that had not met Adequate Yearly Progress standards for more than six years. The schools that were sought by ASPIRA were neighborhood schools with high numbers of English Language Learners (“ELLs”), special education students and economically disadvantaged students. As the management company for two other charter schools, Antonia Pantoja Charter School (“Pantoja”) and Eugenio de Hostos Charter School (“Hostos”), ASPIRA had a history of successfully serving Latino students in North Philadelphia, including significant

¹⁵ See Ex. Olney 258, at 4; Ex. Stetson 239, at 4.

percentages of ELLs and special education students. By virtue of ASPIRA's submissions to the School District, ASPIRA knew that under the Imagine2014 plan, it had to act "with an urgency to dramatically improve the learning environment," produce "dramatic gains in student achievement" and "demonstrate marked improvement in . . . [s]tudent attendance" for all of the students who would be attending the Renaissance charter school, including ELLs and special education students.¹⁶

As noted in the various Renaissance documents and the charter, one anticipated measure of such dramatic gains would be an accountability system developed by the School District that included student academic performance and related school quality measures. Renaissance charter schools were expected to reach a performance level in the first four years of the charter term "that is equivalent to the median performance of District schools."¹⁷ At that time, the School District's accountability system was called the School Performance Index ("SPI"). The charter recognized that the SPI might be modified or replaced in the future, however, so it also required participation in any other accountability systems applicable to all School District schools.¹⁸

The Charter Application submitted by ASPIRA, which was incorporated into the charter, also included a number of "goals" that were shared with the Imagine 2014 strategic plan, including that (i) all children will enter every grade on level; (ii) all students are excited to attend school every day; and (iii) the opportunity and achievement gap is closed for all students.¹⁹ The Charter Application further states: "Our curriculum goals are consistent with both the federal No

¹⁶ See Ex. Olney 76, at 5, 7, 13; Ex. Stetson 63, at 5, 7, 13.

¹⁷ See Ex. JE[O] 2, at 45.

¹⁸ See Ex. JE[O] 2, at 18 ("The Charter School agrees to participate in the School District's annual city-wide academic accountability systems . . .").

¹⁹ See Ex. JE[O] 2, at 131.

Child Left Behind Law and with the goals of Imagine 2014—that every student will be proficient and performing on grade level in the core subjects of Reading, Mathematics and Science.”²⁰

Approximately eight years of data is now available for review to determine if Olney has met the requirements and expectations of the Renaissance Initiative, in addition to meeting expectations that apply to all charter schools in the Commonwealth of Pennsylvania. Based upon the totality of the evidence in the record, Olney has failed to meet those requirements and expectations.

2. Olney has not achieved the performance expected of Renaissance Schools.

The School District replaced the SPI with an improved system called the School Performance Report (“SPR”) beginning in the 2013-14 school year.²¹ Like the SPI, the SPR measured achievement on the Pennsylvania System of School Assessments (“PSSA”) and Keystone Exams, growth on standardized assessments, climate factors, and post-secondary readiness information for high schools. The SPR places schools into performance tiers based upon the number of points scored in each domain, and also ranks schools with similar grade configurations, and schools within smaller peer groups.

The SPR’s citywide rank establishes that Olney did not improve to at least the median performance of all School District schools in the first 4 years of its charter as required, or at any time thereafter. Olney’s citywide rank has declined from 25 out of 100 in the 2013-14 school year to 12 out of 100 in the 2017-18 school year. Moreover, in every year but the first, Olney has

²⁰ *Id.* at 144.

²¹ *See* Ex. JE[O] 26 (2013-14), JE[O] 27 (2014-15), JE[O] 28 (2015-16), JE[O] 29 (2016-17), SD[O] 10 (2017-18).

ranked in the lowest possible tier (Intervene). Olney has never been in the top half of high schools, and most recently ranked in only the 14th percentile (71st out of 83).²²

Olney's Achievement, Progress and College & Career domain scores were all in the lowest tier in its most recent SPR,²³ with Achievement and College & Career scores having always been in that category since 2013-14. In addition, Olney's Overall score of 12 was 22 percentage points below the School District average and 28 percentage points below the Charter Schools average (including Renaissance schools).

As calculated by the SPR, Olney's graduation rate in 2016-17 (63%) was eight percentage points higher than it was in 2013-14 (55%), but continues to lag behind the School District (79%) and Charter School (79%) averages.²⁴

PDE's School Performance Profile ("SPP") uses a different methodology for graduation rates.²⁵ Using PDE's methodology, Olney's graduation rates *declined* eight percentage points from 2011-12 (78%) to 2016-17 (70%), and continue to lag behind the School District (74%) and Charter School (89%) averages.²⁶

As a Renaissance charter school, Olney was also required to meet an Accountability Target for the rate of violent incidents. By the end of the fourth year of operations, Olney was to decrease the rate of violent incidents down to 1.8 incidents per 100 students. Olney has not

²² See Ex. SD[O] 19, at 4 (Table 10).

²³ See Ex. SD[O] 10, at 1.

²⁴ See Ex. SD[O] 19, at 3.

²⁵ The School District's rates are for the school year reviewed in the SPR (including students who earned their final credits in summer school), but PDE's rates are for the year before the one reviewed in the SPP. See Tr. vol. 1, at 150-151; Tr. vol. 8, at 222:6-225:10.

²⁶ See Ex. SD[O] 19 at 3; Tr. vol. 1, at 153.

achieved this rate since 2014-15, and its most recent rate was more than three times higher (5.7 per 100 in 2017-18).²⁷

Renaissance charter schools were also required to demonstrate “marked improvement” in student attendance. To this end, Olney promised in its Charter Application that “all students [would be] excited to attend school every day.”²⁸ Attendance has been measured in various ways by the School District and PDE. The School District’s SPR considers the percentage of students attending at least 95% of their school days.²⁹ PDE’s SPP previously considered average daily attendance, but its Future Ready Index (“FRI”) now considers the percentage of students attending at least 90% of the school days.³⁰ None of these metrics reflect the type of attendance improvement that Olney promised.

Based on Olney’s own data, the average daily attendance reported in the SPPs has never been more than 85.65%, and has declined since the 2013-14 school year.³¹ According to Olney’s Principal, the average daily attendance was only 79.94% in 2017-18, which equates to students missing an average of 36 out of 178 days of school.³² Under PDE’s new metric, only 36.5% of Olney’s students attended at least 90% of the 2017-18 school days.³³ Under the SPR’s metric, only 7% of Olney’s students attended at least 95% of the 2017-18 school days, which was the lowest percentage of all high schools in Philadelphia.³⁴

²⁷ See Ex. SD[O] 19 at 6.

²⁸ See Ex. JE[O] 2, at 131.

²⁹ See Tr. vol. 1, at 169:11-17.

³⁰ See Ex. JE[O] 24, at 8; Tr. vol. 1, at 170:15-171:5.

³¹ See Ex. JE[O] 15 at 2, 4; Ex. JE[O] 22, at 12; Ex. JE[O] 37, at 2; Ex. JE[O] 38.

³² See Tr. vol. 4, at 193:13-15.

³³ See Ex. JE[O] 23, at 7.

³⁴ See Ex. SD[O] 19, at 6 (Table 11); Ex. JE[O] 26-29; Ex. SD[S] 10.

Olney seeks to avoid all responsibility for its failure to meet the objectives of its charter by stressing that the School District changed its accountability report from the SPI to the SPR. This is unpersuasive because both measured the same criteria and Olney made no attempt to prove that it would have fared any better under the SPI's methodology, let alone better enough to meet the objectives of its charter. The core intent was to reach the median performance of School District schools, and Olney has not come anywhere close to that level of performance.

Olney also relies on Measures of Academic Progress ("MAP") as evidence that such dramatic gains actually are occurring, but Olney has only used this system in the last two years and it has not yielded corresponding improvements in academic achievement on State assessments, which are the only appropriate measures of achievement under the Renaissance Initiative.

Olney has good reason to be proud of the substantial climate improvements it has made in the last eight years, but these improvements have not resulted in the "dramatic gains in student achievement" that were expected, either within the first four years of the charter term or at any time thereafter. These achievement gains were the fundamental purpose of the Renaissance program.

For all of these reasons, Olney has not met the Renaissance Initiative requirements in its charter.

3. Olney failed to meet charter requirements for Statements of Financial Interest.

The CSL provides that administrators of charter schools are public officials who must comply with the Public Officials and Employees Ethics Law ("Ethics Act"). 24 P.S. § 17-1715-A(12); 65 Pa. C.S. § 1104(a). The Ethics Act requires each of Olney's Trustees to file a Statement of Financial Interest ("SOFI") by May 1st of each year. 65 Pa. C.S. § 1104(a).

A failure to comply with this requirement may not be deemed a violation of law by Olney itself, because the filing is an individual responsibility. *See School Dist. of York v. Lincoln Charter Sch.*, 889 A.2d 1286, 1289, n.7 (Pa. Cmwlth. Ct. 2006).

Nevertheless, such a failure may be a charter violation if the charter also requires the SOFIs to be filed. *See Khepera Charter Sch. v. School Dist. of Phila.*, CAB No. 2018-01 (Dec. 17, 2018). Here, Olney’s charter provides as follows:³⁵

Public Official and Employee Ethics Act. The Charter School acknowledges that all Charter School trustees and administrators must comply with the Public Official and Employee Ethics Act and that all Charter School trustees and administrators shall submit their completed Statement of Financial Interests forms by May 1st to the Charter School, with copies to the School District.

Thus, Olney was obligated to ensure that its board members filed their SOFIs on time, and was obligated to provide copies to the School District when they did. This was not just a formality, because “[n]o public official is permitted to continue his/her duties unless and until the statement has been filed. 65 Pa. C.S. § 1104(d).” *Thurgood Marshall*, at 16.

Here, 12 of Olney’s Trustees failed to file at least one SOFI, and several failed to file SOFIs for multiple years.³⁶ Thus, Olney violated a charter condition by not ensuring that those filings were made and submitting copies to the School District.

Because these violations are so numerous and blatant, they are sufficiently material to warrant nonrenewal on their own, and even if they were not, they would clearly lend further support to an exercise of the BOE’s discretion to deny a renewal when considered in the aggregate with all the other deficiencies described in this report. *See Khepera*, at 48-49.

³⁵ See Ex. JE[O] 2, at 27-28 § XVIII.F.

³⁶ See Findings of Fact, at A-103 ¶ 390.

4. Olney failed to meet charter requirements for Highly Qualified Teachers.

Olney's charter required it to comply with the Highly Qualified Teacher ("HQT") requirements which were in place through the 2015-16 school year under the No Child Left Behind Act.³⁷ All teachers teaching core academic subjects were required to be highly qualified by the end of the 2005-06 school year. 20 U.S.C. § 6319(a)(2). To be highly qualified, a teacher must hold a bachelor's degree, demonstrate competence in the core content areas taught and meet the CSL's certification requirements.³⁸ Based upon the Required Federal Reporting Measures ("RFRM") reports and Olney's own calculations of HQT status, Olney failed to have 100% of its core subject area teachers highly qualified in the 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16 school years, in violation of both applicable law and its charter.³⁹

Whether or not these violations would be sufficiently material to warrant nonrenewal on their own, they lend further support to an exercise of the BOE's discretion to deny a renewal when considered in the aggregate with all the other deficiencies described in this report. *See Khepera*, at 48-49.

5. Olney failed to meet charter requirements for certification of special education staff.

Olney's charter requires all special education staff to be appropriately certified.⁴⁰

Nevertheless, the vast majority of Olney's special education teachers were not appropriately certified in 2013-14, 2014-15, 2015-16, 2016-17 and 2017-18.⁴¹ This is especially

³⁷ See Ex. JE[O] 2, at 16 § VII. B.1.

³⁸ See, e.g. Ex. JE[O] 11, at 12; Tr. vol. 1, at 196.

³⁹ See Ex. JE[O] 11-14, at the last page of each document; Ex. JE[O] 34, at 2; Ex. Olney 88; Tr. vol. 1, at 196-197.

⁴⁰ See Ex. JE[O] 2, at 16 § VII. B.2.

troubling because Olney had an unusually high population of special education students in all of those years.⁴²

Whether or not these violations would be sufficiently material to warrant nonrenewal on their own, they lend further support to an exercise of the BOE's discretion to deny a renewal when considered in the aggregate with all the other deficiencies described in this report. *See Khepera*, at 48-49.

6. Olney violated its own Bylaws.

Olney's charter included its bylaws and required any amendments to be submitted to the School District within 30 days.⁴³

Since at least July 31, 2015, Olney's Bylaws have required its Board to consist of 5-9 members, including the president of the Parents Association as an *ex officio* voting member.⁴⁴ Olney has not always met these requirements.

The Board's meeting minutes do not reflect who voted on any matter (at least until February 2019), so the record does not reflect any parent member actually voting on any matter. Ms. Hentz was identified as the only parent representative for Olney since May 24, 2016, but she testified that she did not actually vote on any Olney matter until June 2017, because she was not officially appointed to Olney's Board until then.⁴⁵ Moreover, the June 9, 2017 meeting minutes

⁴¹ See Ex. JE[O] 56-58, at 4; Ex. SD[O] 14, at 4; Ex. Olney 166, at 4; Tr. vol. 2, at 125-126, 131.

⁴² See Section III.A below.

⁴³ See Ex. JE[O] 2, at 86, 236-249.

⁴⁴ See Ex. JE[O] 51, at 2-3.

⁴⁵ See Tr. vol. 4, at 37:1-24, 64:1-19.

do not reflect any action to appoint Ms. Hentz to Olney's Board.⁴⁶ Ms. Hentz testified that the Board votes on the election of parent representatives, but the public meeting minutes do not reflect that happening.

Moreover, the Board created the position of vice chair on July 1, 2016, but no one has filled that position since Carmen Paris stopped attending meetings after October 16, 2017.⁴⁷

Olney also has had only four identified board members since April 23, 2018 (assuming Ms. Hentz was actually elected).⁴⁸

Thus, Olney has violated its own Bylaws.

B. Failure to Meet Student Performance Requirements

In addition to its failure to meet charter standards and conditions, Olney has failed to attain the levels of student achievement and growth required of all charter schools. The CSL authorizes a chartering school district not to renew the charter of a school if it does not meet the standards set forth in Chapter 4 of the State Board of Education's regulations (the re-codified version of Chapter 5). *See* 24 P.S. § 17-1729-A(a)(2); *New Hope Acad. Charter Sch. v. School Dist. of York*, 89 A.3d 731 (Pa. Cmwlth. Ct. 2014); *Career Connections Charter High Sch. v. School Dist. of Pittsburgh*, 91 A.3d 736 (Pa. Cmwlth. Ct. 2014); *Graystone (Cmwlth.)*, at 139; *Delaware Valley*, at 27; *Khepera*. As explained below, Olney has failed to meet these standards.

When it enacted the CSL, the General Assembly expressly stated that its intent was to “improve pupil learning,” “increase learning opportunities for all pupils,” and “hold the schools established under this act accountable for meeting measurable academic standards and provide

⁴⁶ *See* Ex. JE[O] 66, at 49-58; Ex. JE[S] 43, at 49-58; Tr. vol. 4, at 37:23-40:15.) (Ex. JE[O] 66; Ex. JE[S] 43.

⁴⁷ *See* Ex. JE[O] 66-67.

⁴⁸ *See* Ex. JE[O] 67, at 40-60; Ex. SD[O] 32.

the school with a method to establish accountability systems.” 24 P.S. § 17-1702-A. Consistent with this intent, the General Assembly required charter schools to participate in the PSSA, Keystone Exams and other accountability systems established in Chapter 4. 24 P.S. § 17-1715-A(8); 22 Pa. Code §§ 4.1-4.83. The purpose of Chapter 4 is “to establish rigorous academic standards and assessments to facilitate the improvement of student achievement and to provide parents and communities a measure by which school performance can be determined.” 22 Pa. Code § 4.2; *see also* 24 P.S. § 17-1702-A(6).

Moreover, the CSL authorizes a school district not to renew the charter of a school that does not meet the standards for student achievement set forth in Chapter 4. *See* 24 P.S. § 17-1729-A(a)(2); *see also, Graystone (Cmwlth.), 139; Career Connections; New Hope; Delaware Valley*, at 27.

As explained below, Olney has failed to meet the standards for student achievement set forth in Chapter 4, as a result of which nonrenewal of its charter is authorized by the CSL.

1. Olney’s Keystone Exam results have not met the Chapter 4 and *New Hope* standards.

When analyzing a charter school’s performance against the Chapter 4 standards, the Commonwealth Court has held: “A consistently low percentage of students scoring proficient or better on the PSSA constitutes a failure to satisfy Chapter 4 student performance requirements and is a valid ground for nonrenewal of a school’s charter under Section 1729-A(a)(2) of the [CSL] where the charter schools’ proficiency rates are lower than those of its school district’s schools as a whole and no clear pattern of significant improvement in its PSSA results is shown.” *New Hope*, at 737. “A holding that the [CSL] requires that charter schools remain open despite student academic performance that is consistently far below state standards would violate the overriding purpose of the Public School Code to provide ‘a thorough and efficient system of

public education,’ and could raise issues of unconstitutionality under Article III, Section 14 of the Pennsylvania Constitution.” *New Hope (Cmwlth)*, at 739-740.

Here, not only did Olney’s Keystone Exam scores not exhibit a “clear pattern of significant improvement,” but they also fell below the proficiency rates of the schools operated by the School District and the charter schools serving Philadelphia students with similar grades, both of which are proper comparator groups according to CAB. *Delaware Valley*, at 29.

Comparing a charter school’s academic performance to the academic performance of the schools within the local school district is appropriate when applying 24 P.S. § 17-1729-A(2). *Id.*; *see also Truebright (CAB)*, at 18; *Community Academy of Phila. Charter Sch.*, CAB No. 2013-02 (June 1, 2015), at 45. CAB has affirmed the comparison of a charter school’s scores to the average of the scores of both the School District operated schools and the other charter schools operating within the School District. *Delaware Valley*, at 29.⁴⁹

As a Renaissance charter school, Olney was required to enroll students from the neighborhood catchment area. Although Olney is doing so, it has also “more aggressively” marketed itself to and recruited students from families throughout Philadelphia. As a result, Olney has a history of enrolling at least 20% of its students from outside the designated Attendance Zone.

A significant portion of the School District’s students are enrolled in charter schools. The School District is unique compared to all other school districts in Pennsylvania, due to its tremendous size and its large number of brick and mortar charter schools. As noted in a 2017 study by The Pew Charitable Trusts, approximately 30% of all ninth graders in Philadelphia

⁴⁹ In its Renewal Recommendation Report, the CSO also compared Olney’s performance to a “peer group” of demographically similar schools, but that comparison was not relied upon at the hearing, because Olney’s students might not enroll in those schools if the charter is not renewed.

public schools attended charter schools during the 2014-15 school year.⁵⁰ Because charter schools are such a large portion of the public schools in Philadelphia, CAB has held that it is appropriate to compare a charter school's performance to the performance of charter schools as a whole. *See Delaware Valley; Khepera.*

When Olney's charter was issued, Pennsylvania used PSSA exams to measure eleventh grade proficiency. However, in the second year of Olney's charter, Keystone Exams were used instead. Initially, the performance of Olney's students on the Keystone Exams improved, which showed early progress towards meeting both the objectives of the Renaissance Initiative and the Chapter 4 performance standards. However, Olney's promising start was short-lived.⁵¹

In the 2014-15 school year, Olney's proficiency levels dropped dramatically in all three tested areas (Algebra I, Literature and Biology). Percentages improved in those subject areas in the 2015-16 school year, but then dropped again in 2016-17 and 2017-18. On the Algebra I exam, only 13% of Olney's eleventh graders scored proficient or advanced in 2016-17 and only 14% did in 2017-18. Both of those percentages were lower than Olney's 2012-13 percentages.

On the Biology exam, the percentage of Olney's eleventh graders scoring proficient or advanced improved from 5% in 2012-13 to 14% in 2013-14, but then fell to 11% in 2014-15. The percentage rose to 16% in 2015-16, but then fell to 7% in 2016-17, and then rose only to 9% in 2017-18.

On the Literature exam, Olney's results improved slightly in 2014-15 but have otherwise been consistently worse than its 2013-14 scores: 38% in 2012-13; 40% 2013-14; 25% in 2014-15; 34% in 2015-16; 21% in 2016-17; and 20% in 2017-18.

⁵⁰ See Ex. Olney 255, at 7-8.

⁵¹ See Ex. SD[O] 19, at 1-2 (Tables 1-3); Tr. vol. 1, at 135-138.

Even more troubling, there has been a worsening trend of below basic scores on the Algebra I and Literature exams from 2014-15 to 2017-18.⁵²

Since the 2012-13 school year, Olney's Algebra I, Literature and Biology proficiency rates on the eleventh grade Keystone Exams have been significantly worse in every year than the proficiency rates of all eleventh graders in School District schools and all eleventh graders in Philadelphia brick and mortar charter schools, including Renaissance charter schools.⁵³

2. Olney's SPP and Future Ready Index data falls below the standards set by the State's accountability systems.

The assessment system in Pennsylvania has undergone changes in the last several school years. As noted by CAB:

Prior to 2013, Section 4.51 of Ch. 4 regulations required schools to demonstrate that their students were proficient or better on the PSSA tests every year, pursuant to the mandates of the NCLB, utilizing AYP. 22 Pa. Code § 4.51(a)(1). However, in 2013, PDE sought and received a waiver from the United States Department of Education from NCLB, and as a result, PDE abolished AYP as a school's accountability measure and created the SPP as a new metric for measuring academic achievement

The SPP has replaced AYP as the Commonwealth's accountability measure for public schools. Further, the SPP is to be utilized to inform the public of the academic performance measures of each school, to offer a resource for LEAS, to communicate and compare the school's performance to local schools or schools with similar demographics, to analyze performance indicators as related to achievement and to encourage best practices. [<http://paschoolperformance.org>.] Accordingly, under this new metric, achievement results (PSSA/Keystone Exams) and growth results (PVAAS) must be used together to get a complete picture of student learning.

Delaware Valley, at 32-33.

Beginning in the 2017-18 school year, the State accountability system has changed to the FRI. Despite this change, SPP scores are still calculated by the State, because such scores are a

⁵² See Ex. JE[O] 41-42.

⁵³ See Ex. SD[O] 19, at 1-2 (Tables 1-3)

required for Multiple Charter School Organization applications, 24 P.S. § 17-1729.1-A(b)(1)(iii), and for Pennsylvania’s teacher evaluation framework.

Under the SPP accountability system, Olney’s academic performance has been below standards, with a building level score in the lowest category of performance in each year: 53.5 in 2012-13; 49.6 in 2013-14; 39.0 in 2014-15; 41.4 in 2015-16; 37.9 in 2016-17; and 34.9 in 2017-18.⁵⁴ Olney’s SPP score also fell below the average SPP score for School District schools and the charter sector in every year since 2012-13.⁵⁵ Olney’s 2016-17 SPP score of 37.9 was lower than 93% of all School District and charter schools operating in the City that received an SPP score.⁵⁶

The SPP score includes not only proficiency data, but also growth data, using the Pennsylvania Value Added Assessment System (“PVAAS”). “PVAAS utilizes the Average Growth Index (“AGI”) to assess growth at different levels.” *Delaware Valley*, at 34. “Evaluating AGI may help to determine if the school is meeting its growth standards even if its SPP score or proficiency scores may not be as high as School District schools.” *Id.* Olney has consistently not shown evidence of growth since the 2012-13 school year. In those six years, Olney had a yellow or red score (indicating moderate or significant evidence of not meeting the growth standard) in 13 of the 18 Keystone exams for Algebra I, Literature and Biology.⁵⁷ Olney has particularly struggled with getting students to grow in Biology and Literature. These data points further support the conclusion that Olney failed to meet Chapter 4 requirements for student performance. *Delaware Valley*, at 33-34.

⁵⁴ See Ex. SD[O] 19, at 4 (Table 7); Ex. JE[O] 15-16, 37; Tr. vol. 1, at 154-155.

⁵⁵ *Id.*

⁵⁶ See Ex. SD[O] 19, at 4 (Table 8); Tr. vol. 1, at 157-158.

⁵⁷ See Ex. SD[O] 19, at 2 (Table 4); Ex. JE[O] 18-21; Tr. vol. 1, at 146-147.

As a result of Olney’s performance on the accountability systems, the State has identified Olney first as a Priority school from 2013-14 through 2016-17 and starting in the 2017-18 school year as a Comprehensive Support and Improvement school.⁵⁸ Both designations require Olney to engage in improvement activities, including the filing of improvement plans. Unfortunately, the additional assistance that Olney received has not helped improve its academic outcomes.

C. Failure to Meet Generally Accepted Standards of Fiscal Management and Audit Requirements

A chartering school district is authorized to revoke a charter if the charter school fails to meet generally accepted standards of fiscal management or audit requirements. 24 P.S. § 17-1729-A(a)(3). Case law from CAB and the appellate courts has provided guidance regarding the standards of fiscal management applicable to charter schools on which a revocation or nonrenewal decision can be premised. Examples of violations of generally accepted standards of fiscal management include overspending a school’s budget, operating with budget deficits, failing to conduct timely audits, having a negative fund balance, and having unhealthy financial metrics during the charter term. *See, e.g., Renaissance Charter* (nonrenewal upheld where charter school failed to complete timely audits); *Renaissance Acad. of Pittsburgh Alternative of Hope (“RAPAH”) Charter School*, CAB No. 2007-03 (June 29, 2007) (non-renewal upheld where charter school had a deficit of several hundred thousand dollars for multiple years and had entered into a 30-year debt); *Ronald H. Brown Charter Sch.*, CAB No. 2005-08 (Jul. 19, 2006) (“*Ronald H. Brown (CAB)*”), *aff’d*, 928 A.2d 1145 (Pa. Cmwlth. Ct. 2007) (“*Ronald H. Brown (Cmwlth.)*”), (upholding revocation where charter school had multiple years of negative fund balances and overspent its budget); *Thurgood Marshal* (fiscal mismanagement sufficient to

⁵⁸ See Ex. JE[O] 32-33; Tr. vol. 1, at 193; Tr. vol. 4, at 268-269; Ex. JE[O] 25; Tr. vol. 1, at 194-195.

support revocation where charter school overspent its budget by over \$140,000; failed to make employer contributions to PSERS; failed to timely pay creditors; placed itself in a budget deficit of over \$50,000; and failed to ensure timely audits were performed); *Creative Educ. Concepts Charter Sch.*, CAB No. 1999-15 (Mar. 15, 2000) (revocation upheld where charter school operated at a loss); *Delaware Valley* (nonrenewal upheld due to missed PSERS payments, unhealthy financial metrics and overbilling the district).

A charter school's failure to appropriately manage its finances is a proper ground for nonrenewal. In *Delaware Valley*, the School District's nonrenewal was upheld based upon financial mismanagement where the charter school had unhealthy financial metrics, including a current ratio of less than 1.0 and only 6-10 days of cash on hand. *Id.*, at 39.

1. Olney has had poor fiscal management.

The following information culled from Olney's independent audit reports is set forth in a table that the School District attached to its proposed findings of fact: Total Assets, Total Liabilities, Net Position, Total Revenue, Total Expenditures, Changes in Net Position, Days Cash on Hand, Net Position (% of Revenue), Total Margin (% of Revenue), Current Ratio, Fund Balance (% of Revenue), and Fund Balance for Fiscal Years 2012 through 2018.⁵⁹ Similar to *Delaware Valley*, Olney has had a fund balance deficit during each of the last three years for which an audit has been completed. By June 30, 2018, Olney had a fund balance deficit of \$766,018. Olney's net position has declined by more than \$4 million since the 2014-15 school year. Olney operated with deficits in three of the last four years. The financial ratios calculated by OAS establish that Olney was high risk in each of the last four audited years. As of the end of the 2017-18 school year, Olney *had less than eight days of cash available*, which is a serious

⁵⁹ See Ex. HO[O] 112, at 124; Ex. JE[O] 4-10; Ex. JE[O] 17, at 24-25; Ex. SD[O] 30-31; Ex. Olney 207.

concern for a school with more than 1,900 students. Its current ratio, measuring an entity's ability to pay debt and obligations in the short-term of one year, was less than 1.0 in each of the last three years, which is below fiscal standards. Olney's long-term financial ratios are also poor, because its net position and non-restricted fund balance as a percentage of revenue are below the applicable fiscal standards. Under these circumstances, Olney would be unable to satisfy substantial guarantees that it provided to PNC Bank and Provident Bank,⁶⁰ which jeopardizes the education of Olney's students.

Olney attempts to blame changes in funding rates for the declines in its financial performance, but those arguments are unpersuasive. Olney received per pupil funding rates in the same manner and using the same methodology as all other charter schools.⁶¹ Other revenue impacts (loss of school improvement grants, social security subsidy loss, PSERS subsidy loss) are events outside the control of the School District for which a public entity needs to have a sufficient fund balance to absorb. Moreover, these revenue impacts were not the sole reasons for Olney's poor financial health.

Olney's own audits describe a pattern of Olney overspending its budgeted expenditures by more than \$3 million in each of the last three school years. Exceeding budgeted expenditures has nothing to do with the revenue received. Olney never amended its budget to address growing expenditures.

The evidence established that the ASPIRA-provided financial team engaged in poor accounting practices and weak internal controls from the inception of the charter until the 2016-17 school year, which contributed to the intercompany loans described in Section II.C.5 below

⁶⁰ See Section II.C.4 below.

⁶¹ Olney contends that the School District has taken inappropriate deductions in the calculation of the rates, but no tribunal has ever determined that to be the case and the School District disagrees with those assertions.

and the failure to properly document transactions.⁶² Even after Thomas Darden and Xin Yi came on board at ASPIRA, Olney has been slow to rectify the issues identified in the CSO's renewal recommendation reports. It was not until the SRC voted to commence nonrenewal proceedings that steps were taken to adopt a Financial Policy Manual and a Position Control Policy to better control position hiring.⁶³ Despite concerns raised by the CSO and OAS over the lack of school-based financial personnel going back to 2015 and 2016, James Parsons and Karen Willis were not hired until the summer of 2018, and they were not given access to Olney's bank accounts until the January 28, 2019 meeting of Olney's Board.⁶⁴ Neither of those individuals testified at the hearing.

Mr. Darden testified about the Finance Committee that was allegedly established by the Board, but the establishment of a Finance Committee is not reflected in the Board's minutes.⁶⁵ According to Olney's Bylaws, all committees need to be approved by the Board along with the identification of their members and their functions.⁶⁶ According to the minutes, that never happened. Nor do the minutes reflect the Finance Committee ever reporting any information to the full Board and the Finance Committee does not meet publicly.⁶⁷

Another problem that has been permitted to continuously occur throughout Olney's existence is the failure of ASPIRA to present monthly invoices to the Board for review and approval pursuant to its Management Service Level Agreements ("MSLAs"). Every version of

⁶² See Tr. vol. 7, at 139:15-140:15.

⁶³ See Ex. Olney 95; JE[O] 61, JE[O] 67, at 30; Tr. vol. 8, at 91:12-21, 97:18-21; Tr. vol. 16, at 162:10-164:13.

⁶⁴ See Tr. vol. 7, at 145:14-24; Ex. SD[O] 32, at 33.

⁶⁵ See Tr. vol. 7, at 149:2-150:16.

⁶⁶ See Ex. JE[O] 51-53; Ex. JE[O] 54, at 4.

⁶⁷ See Tr. vol. 7, at 150-152.

the MSLA has required such submission and approval of monthly invoices.⁶⁸ With only one exception, such submissions and approvals do not appear in any of the Board's minutes.⁶⁹ The sole exception was after the nonrenewal resolution, at a meeting on February 26, 2018, in which a motion was made, seconded and carried to approve ten ASPIRA invoices dated January 31, 2018.⁷⁰ Although the Board minutes do not reflect an actual vote on the motion, ASPIRA invoices were presented for approval and listed for each school. This was the first and last time any minutes addressed the presentation to and approval by the Board of any ASPIRA invoices. The failure to require presentation of invoices under the MSLAs and the failure of approve such invoices in public, are violations of both generally accepted standards of fiscal management and the Sunshine Act.

Another area of concern relates to the employment of the Superintendent and other Central Office staff. Those individuals had been employed by ASPIRA since February 2015. However, at the February 26, 2018 meeting, the Board entertained a resolution to move the employment of the Superintendent and a Senior Director of Curriculum and Instruction to Stetson.⁷¹ The minutes do not reflect an actual vote on this resolution. If a vote occurred that is not reflected in the meeting minutes, then these two individuals have been paid by Stetson since February 26, 2018, and performing services for the other charter schools, including Olney, since that date. Such services include supervising the Principals of each school. The minutes never mention the Board taking action on a contract regarding those individuals, Stetson or any other Central Office employee, or how payment would be made for their services. This deficiency was

⁶⁸ See Ex. JE[O] 44, at 3 ¶ 4.2, JE[O] 45, at 3 ¶ 4.2, JE[O] 46, at 2 ¶ 4.1.

⁶⁹ See Tr. vol. 7, at 153:10-154:5.

⁷⁰ See Ex. JE[O] 67, at 32.

⁷¹ See Ex. JE[O] 67, at 24.

later compounded by a Staffing Agreement approved on April 8, 2019 between Olney and ASPIRA and between Stetson and ASPIRA, which continued to identify the Superintendent and the Senior Director of Curriculum and Instruction as ASPIRA employees for whom payment is required to be made to ASPIRA.⁷² These discrepancies in the basic contractual documents and Board governance materials reflect failures to comply with generally accepted standards of fiscal management. They also reflect poorly on the Board members' fulfillment of their fiduciary duties to the respective non-profit entities, to ensure that charter school funds are paid to the proper entities in accordance with contractual requirements.

Moreover, charter schools are required to make payments into the Public School Employees' Retirement System ("PSERS") on a quarterly basis. 24 P.S. § 8327(a). If a charter school fails to make the required contributions to PSERS, PDE is authorized to deduct the unpaid amounts from the chartering school district's appropriation, with the expectation that the chartering school district will then deduct an equivalent sum from any amount due to the charter school. 24 P.S. § 8327(b)(2). Olney failed to make these required payments to PSERS in a timely manner on two occasions.⁷³ This might not be material on its own, but it further evidences Olney's pervasive lack of responsible fiscal management.

2. Olney has failed to complete timely financial audits.

Failing to conduct a timely financial audit is also a proper ground for revocation under 24 P.S. § 17-1729-A(a)(3).

Olney's audits for the following school years were issued after the December 31 deadline: the 2011-12 audit was issued on April 19, 2013; the 2012-13 audit was issued on

⁷² See Ex. Olney 295, at 27; Ex. Stetson 272, at 27.

⁷³ See Ex. JE[O] 108, ¶ 7-8.

January 20, 2014; the 2013-14 audit was issued on February 6, 2015; and the 2015-16 audit was issued on January 23, 2017.⁷⁴

As in *Graystone (CAB)*, *Renaissance Charter* and *Thurgood Marshall*, nonrenewal is appropriate here due to Olney's failure to conduct timely audits, especially when coupled with the other issues described above. As explained in *Graystone (CAB)*, the receipt of timely financial audits is necessary to the charter school review process.

First, the reason for requiring the regular filing of financial audits by a charter school is to promote accountability and to enable the chartering school district, which has oversight of the charter schools it authorizes, to identify possible financial mismanagement before it becomes a serious problems, as the financial mismanagement did in *Renaissance Charter School* and the other cases cited above. The audit fulfills a statutory obligation, generates financial statements for a school, and requires the school to do a number of tests regarding its fiscal health and sustainability. To refuse to hold the charter school to the requirement of timely filed audits in the absence of evidence of financial mismanagement only encourages charter schools to file untimely audits in cases of actual financial mismanagement. Secondly, an untimely filed audit is unquestionably a violation of generally accepted standards of fiscal management and audit requirements and cannot be minimized in a case like this, where numerous other violations exist, without rejecting the intrinsic value of the audit to both the school and to the chartering district. Therefore, this violation was a material one and, particularly when aggregated with the other violations found above, justifies the termination of Graystone's charter.

Id., at 60. The Commonwealth Court agreed with CAB's analysis and also concluded that the failure to file timely financial audits was a violation of generally-accepted standards of fiscal management. *Graystone (Cmwlth.)*, at 140-141. Thus, Olney's failure to provide timely audits in four of seven school years for which audits are available is a violation of both applicable law and generally accepted standards of fiscal management.

⁷⁴ Ex. JE[O] 5, at 4; Ex. JE[O] 6, at 4; Ex. JE[O] 7, at 4; Ex. JE[O] 8, at 4.

3. Olney's Board provided insufficient oversight of ASPIRA's fiscal management.

A charter school is “an independent public school established and operated under a charter from the local board of school directors and in which students are enrolled or attend. A charter school must be organized as a public, nonprofit corporation.” 24 P.S. § 17-1703-A. Nonprofit corporations are entities created under the Nonprofit Corporation Law (“NCL”), and operated by boards of directors. 15 Pa. C.S.A. §§ 5310, 5712. In the charter school context, the CSL refers to such boards as boards of trustees. The General Assembly outlines the powers that the board of trustees of a charter school has to operate the school:

The board of trustees of a charter school shall have the authority to decide matters related to the operation of the school, including, but not limited to, budgeting, curriculum and operating procedures, subject to the school's charter. The board shall have the authority to employ, discharge and contract with necessary professional and nonprofessional employees subject to the school's charter and the provisions of this article.

24 P.S. § 17-1716-A(a).

Unlike the role of the charter school's board of trustees, which is clearly outlined in the CSL, the CSL does not address or provide for the role of a management company in the operation of a charter school. “A prerequisite to the grant of a charter is the organization of the school as a nonprofit corporation governed by a board of trustees that possesses authority to decide matters relating to the operation of the school, subject to the school's charter.” *Mosaica Acad. Charter Sch. v. Department of Educ.*, 813 A.2d 813, 818 (Pa. 2002). Thus, when a board of trustees decides to turn over some functions to a management company, the trustees of the charter school must maintain ultimate control. *West Chester Area Sch. Dist. v. Collegium Charter Sch.*, 812 A.2d 1172, 1177 (Pa. 2002).

As explained below, Olney's Board abdicated its responsibility to ensure that ASPIRA only used Olney's finances for Olney's benefit.

4. Olney guaranteed financing for ASPIRA and other ASPIRA-managed schools.

Under every version of Olney's Bylaws, Olney's Board is responsible for approving or creating any indebtedness of Olney, and the manner in which such indebtedness would be incurred. Soon after Olney received its charter, ASPIRA-appointed individuals on the Board took steps to pledge Olney's assets and revenues as collateral for a bond financing, loan and various lines of credit that ASPIRA, ACE/Dougherty LLC ("ACE/Dougherty") and other entities obtained through PNC Bank. The total amount of the PNC financing for which Olney pledged its assets as collateral was over \$18 million.⁷⁵

Olney did not inform the School District about its role in the PNC financing.⁷⁶ Olney did not discuss these matters at a public meeting, at least not as reflected in the minutes, and the Board did not vote to approve Olney's role in the transaction. Nor did Olney's auditors report on Olney's role in the transaction until the audited financial statements were issued for the year ending June 30, 2017, more than five years after the transactions had occurred.⁷⁷

With Olney's agreement to serve as a guarantor of the PNC financing, the Philadelphia Authority for Industrial Development and PNC Bank agreed to finance \$12,750,000 in Revenue Bonds for ACE/Dougherty's purchase of the Cardinal Dougherty facility so that Hostos could operate out of that facility; PNC Bank agreed to make a \$5 million loan to Aspira Community Enterprises; PNC Bank agreed to give a \$900,000 line of credit and a \$629,554.66 term loan to ASPIRA; PNC Bank provided a \$50,000 line of credit to Hostos; and PNC Bank committed to a

⁷⁵ See Findings of Fact, ¶¶ 420-485.

⁷⁶ See Ex. JE[O] 2.

⁷⁷ See Ex. JE[O] 6, at 19-20.

\$50,000 line of credit to ASPIRA and Stetson (collectively, the “PNC Obligations”).⁷⁸ All of these transactions came with obligations for the Borrowers, and for Olney as a guarantor under the lending documents. By signing a Security Agreement, Olney pledged as collateral all of its gross revenues, tuition, grants, net assets, etc. to act as security for all of the PNC Obligations noted above.⁷⁹ The Security Agreement permits PNC Bank to declare all of the PNC Obligations immediately due and payable in the event of a default.

In 2014, when the School District learned of the Charter Schools’ roles as guarantors in the PNC transactions, Mr. Chao informed Olney, through its management company, of the problems associated with these transactions and directed ASPIRA to renegotiate the bank loans to remove the Charter School’s guarantees.⁸⁰ Unfortunately, that did not happen.

Instead, Olney did it again about a year and a half later, after the CSO had already recommended nonrenewal, in part as a result of the guarantees. On April 22, 2016, the Board permitted Olney’s assets and revenues to be used as collateral again, this time for the procurement of a \$3.3 million term loan and revolving line of credit for ASPIRA, issued by Provident Bank.⁸¹ The Security Agreement signed by five members of the Board permitted Provident Bank to execute against Olney’s assets in the event of a default. Instead of requiring ASPIRA and ACE/Dougherty to obtain refinancing to remove the guarantees that Olney had pledged to PNC Bank, the Board now permitted Olney’s assets to be used for two multi-million dollar financings that benefited ASPIRA, ACE/Dougherty and Hostos.

⁷⁸ See Ex. Olney 100-101.

⁷⁹ See Ex. Olney 289, at 33.

⁸⁰ See Ex. SD[O] 24, at 1-2.

⁸¹ See Ex. JE[O] 81-84.

The PNC financing and the Provident financing are both in default, because the Borrowers could not make the balloon payments due and have not been able to obtain refinancing, despite years of trying. While Forbearance Agreements have been entered into, Olney remains subject to the guarantee obligations in those lending agreements.⁸²

Mr. Samms contended that Olney's obligations are unenforceable because the agreements were not approved at public meetings, as required by the Sunshine Act. However, there has been no court ruling or agreement to that effect. Whether Olney might be permitted to rely upon its own violations of law as a defense to liability for the contracts it knowingly signed remains to be seen. Either way, signing the guarantees was both reckless and fiscally irresponsible.

5. Olney shifted funds to ASPIRA and other ASPIRA-managed schools.

Throughout the charter term, substantial amounts of Olney's funds were transferred to ASPIRA and other ASPIRA-managed schools, without any documentation or Board approval. This began immediately in the first year of Olney's operations and continued into the 2014-15 school year.⁸³ By the end of the 2014-15 school year, ASPIRA owed Olney more than \$2.5 million for these transfers.⁸⁴ According to the Board minutes, none of the transfers were authorized by Olney's Board.⁸⁵

After these unsecured, non-interest bearing "loans" were discovered, the CSO attempted to address them with ASPIRA. In December 2014, an attorney for ASPIRA responded that there

⁸² See Ex. Olney 108-110, 113-116.

⁸³ See Ex. JE[O] 4-10 (notes); Tr. vol. 3, at 18:15-19; Ex. SD[O] 9, at 3.

⁸⁴ See Ex. SD[O] 9, at 3; Ex. JE[O] 7, 23-24 (note 11).

⁸⁵ See Ex. JE[O] 3; Ex. JE[S] 38-42.

would be no such intercompany loans in the future and that the previous loans had all been repaid.⁸⁶

Neither of those representations turned out to be true. With respect to Olney, the past intercompany transfers were not fully repaid until the 2017-18 school year.⁸⁷ Given Olney's financial situation, those were funds that Olney needed and should have been using to educate its students in order to achieve the promised "dramatic gains in academic achievement." With respect to Stetson, the past intercompany transfers were not fully repaid until the 2015-2016 school year, and then an additional \$233,844 was transferred to ASPIRA in the following year.⁸⁸

The same Board oversees both Olney and Stetson, with the exception of one or two parent or community board members from time to time. In Stetson's case, the Board again permitted Stetson's funds to be used as cash flow for ASPIRA (and possibly other charter schools) on February 26, 2018.⁸⁹ On that date, the Board authorized a transfer of more than \$1.1 million in Stetson's funds to ASPIRA and authorized the use up to \$1.9 million of Stetson's funds to help ASPIRA's cash flow. ASPIRA took the full \$1.9 million from Stetson and that amount remains due and owing to Stetson as of April, 2019, over a full year later.⁹⁰ Stetson has not had those funds for its own use and the benefit of its students. This "loan" was again unsecured and without any interest.

6. Olney paid exorbitant rent to ACE/Dougherty.

Olney also mismanaged its finances by entering into a ten-year Lease Agreement with ACE/Dougherty as of October 19, 2011, which requires Olney to pay 120% of the debt service

⁸⁶ See Ex. SD[O] 25.

⁸⁷ See Tr. vol. 7, at 173:4-174:9; Ex. JE[O] 9, at 25.

⁸⁸ See Ex. SD[S] 6, at 3; Ex. JE[S] 6; Ex. JE[S] 8, at 25.

⁸⁹ See Ex. SD[O] 22.

⁹⁰ See Tr. vol. 7, at 179:19-181:19.

for the area leased.⁹¹ The Lease is triple net, meaning that in addition to paying 20% more than the debt service, Olney is paying “all costs, expenses and obligations of every kind related to [its portion of] the Property which may arise or become due during the term of the lease, including, without limitation, all taxes, utilities, casualty and liability insurance premiums and repair, maintenance and replacement expenses.”⁹² There is no evidence that Olney’s Board had its own counsel or engaged in any arms-length negotiations when it entered into this lease.⁹³ ASPIRA’s accountant, Mr. Rosenman, admitted to Mr. Krain that the main purpose for moving Olney’s Excel Academy into the ACE/Dougherty building was to assist Hostos in paying for a building that it could not afford to pay for by itself.⁹⁴ Olney did not need to lease this property from ACE/Dougherty, because it could have kept the Excel Academy program at its own facility or leased space from a third party at a less exorbitant rent.⁹⁵ The ten-year term of lease also raises concerns, because it exceeds the length of Olney’s charter. Moreover, under the Subordination and Attornment Agreement, PNC Bank has a right to collect the rent from Olney, without regard to whether Olney is actually using the space.⁹⁶ Mr. Darden testified that Olney has moved the Excel Academy back to its own facility and is no longer paying rent under the lease.⁹⁷ However, this does not excuse Olney’s previous payment of excessive rent to help Hostos, or negate Olney’s continuing obligation under the PNC agreement.

⁹¹ See Ex. JE[O] 10.

⁹² See Ex. JE[O] 103, at 3-4.

⁹³ The only evidence regarding any counsel for Olney at this time is an opinion letter by Fox Rothschild for the PNC Bank bond deal, in which Fox Rothschild represented the Borrower and all of the guarantors, despite the fact that they were all separate corporations with different interests. See Ex. Olney 101.

⁹⁴ See Tr. vol. 3, at 120:12-121:23.

⁹⁵ See Tr. vol. 3, at 138-139, 154:7-155:1.

⁹⁶ See Ex. JE[O] 98.

⁹⁷ See Tr. vol. 7, at 34:13-35:17.

D. Violation of Applicable Laws

Olney's Board took actions that raised conflicts of interest, failed to address those conflicts through an open and public process, breached their fiduciary duties, and violated various applicable laws.

1. Olney used charter school funds for non-charter school purposes.

Charter schools are funded through taxpayer dollars, primarily through the local per pupil payments by school districts. 24 P.S. § 17-1725-A. Charter schools are also eligible to receive certain federal grants to public schools under Title I, the Individuals with Disabilities Education Act and other programs, and reimbursements through various State-initiated subsidy opportunities like lease reimbursements, if they meet the qualifications. All of these revenue streams are taxpayer-funded, and a charter school is entitled to receive them because it is a public entity educating students under the public education system established by the General Assembly. Accordingly, the CSL provides that a charter school shall: "[r]eceive and disburse funds for charter school purposes only" 24 P.S. § 17-1714-A(a)(4).

Olney used substantial amounts of its charter school funds for the guarantees, transfers and lease discussed above, instead of for its own charter school purposes.⁹⁸ This violated the CSL. 24 P.S. § 17-1714-A(4); *Pocono Mountain Charter Sch. v. Pocono Mountain Sch. Dist.*, CAB No. 2010-06-A (June 5, 2014), at 25-28 (charter school violated section 1714-A(4) by paying for the car lease payments of the church's pastor who was also the CEO of the charter school; paying the church rent for a building that was not yet usable; paying for improvements to the property for which it did not receive a rent abatement; allowing non-charter school entities to

⁹⁸ Notably, Gary Samms, the Charter School's expert witness, did not address whether Olney's transfers of funds to ASPIRA and other ASPIRA-managed schools violated section 1714-A(4) of the CSL.

receive a benefit from use of the charter school's gymnasium at no cost; and paying for a sign that partly benefitted the church).

The transfers of funds and excessive lease payments described in Sections II.C.5 and II.C.6 above were clearly violations because they were actual "disbursements" of charter school funds. However, the guarantees described in Section II.C.4 above were commitments to spend funds in the future if the loans were not repaid. This use of Olney's assets as collateral should also be considered a disbursement for purposes of Section 17-1714-A, because otherwise, charter schools could evade the restriction entirely by pledging their charter school funds as collateral for a loan and using the loan proceeds for non-charter school purposes, instead of using the funds directly.

Although ASPIRA was selected as the turnaround team, the charter clearly required Olney to be controlled by an independent board of trustees. In other words, ASPIRA was expected to help the board, not supplant it. In that sense, Olney should have viewed ASPIRA as a contractor providing turnaround services. A charter school's board of trustees is required by law to exercise this ultimate control over a management company. *Collegium*, at 1177.

Olney is its own non-profit corporation, operating under a single charter issued by the School District. Yet it has been operated as if it is part of a larger entity that includes ASPIRA and the other ASPIRA-managed schools. Charter schools can share the same management company, call themselves a "network," and share certain expenses, but they cannot permit their own funds to be used for the benefit of their management company or other schools in the same "network."

2. Olney’s Board took actions that raised conflicts of interest, failed to address those conflicts through an open and public process, and breached their fiduciary duties.

The transactions noted above violated the CSL, but those are not Olney’s only violations of law. Violations of the Ethics Act, the NCL and the Sunshine Act were also established at the hearings.

All of the trustees on Olney’s Board except the parent representative (when there was one) also served on the Boards of all the other ASPIRA-managed schools. There is nothing inherently wrong with this arrangement. *See McKeesport Area Sch. Dist. v. Propel Charter Sch. McKeesport*, 888 A.2d 912, 921 (Pa. Cmwlth. Ct. 2005) (“CSL does not prohibit cross-membership of the charter school’s Board of Trustees or ban one group of persons from applying for a charter for more than one charter school.”).

However, the Ethics Act provides that, “no public official or public employee shall engage in conduct that constitutes a conflict of interest.” 65 Pa. C.S. § 1103. This includes trustees of a charter school. 24 P.S. § 17-1715-A(11). For this purpose, a “conflict of interest” is defined as “[u]se by a public official or public employee of the authority of his office or employment . . . for the private pecuniary benefit of . . . a business with which he or a member of his immediate family is associated” 65 Pa. C.S. § 1102.

The Ethics Act also provides as follows:

No public official or public employee . . . or any business in which the person . . . is associated shall enter into any contract valued at \$500 or more with the governmental body with which the public official or public employee is associated . . . unless the contract has been awarded through an open and public process, including prior public notice and subsequent public disclosure of all proposals considered and contracts awarded. In such a case, the public official or public employee shall not have any supervisory or overall responsibility for the implementation or administration of the contract.

* * *

Any public official or public employee who in the discharge of his official duties would be required to vote on a matter that would result in a conflict of interest

shall abstain from voting and, prior to the vote being taken, publicly announce and disclose the nature of his interest as a public record in a written memorandum filed with the person responsible for recording the minutes of the meeting at which the vote is taken, provided that whenever a governing body would be unable to take any action on a matter before it because the number of members of the body required to abstain from voting under the provisions of this section makes the majority or other legally required vote of approval unattainable, then such members shall be permitted to vote if disclosure are made as otherwise provided herein.

65 Pa. C.S. § 1103(f), (j).

Under the NCL, an interested director of a nonprofit corporation is a director who has a contract or has engaged in a transaction with the nonprofit corporation or is a director who has a financial or other interest in a domestic or foreign corporation for profit or not-for-profit, partnership, joint venture, trust or other association with which the nonprofit corporation has a contract or has engaged in a transaction. *See* 15 Pa. C.S.A. § 5728. The NCL permits a board to authorize a contract or transaction by the affirmative votes of a majority of the disinterested directors even though the disinterested directors are less than a quorum. 15 Pa. C.S.A. § 5728(a)(1). A contract or transaction in which an interested director has voted is not void or voidable, as long as:

- (1) the material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the board of directors and the board authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors even though the disinterested directors are less than a quorum;
- (2) the material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the members entitled to vote thereon, if any, and the contract or transaction is specifically approved in good faith by vote of those members; or
- (3) the contract or transaction is fair as to the corporation as of the time it is authorized, approved or ratified by the board of directors or the members.

Id.

Under these laws, Olney's transactions with ASPIRA and the other ASPIRA-managed schools raised conflicts of interest that needed to be disclosed and appropriately addressed under the Ethics Act, and all Board members except the parent representatives needed to recuse themselves as "interested directors." According to the meeting minutes, none of this happened.

In addition, the NCL states as follows:

(a) Directors.--A director of a nonprofit corporation shall stand in a fiduciary relation to the corporation and shall perform his duties as a director, including his duties as a member of any committee of the board upon which he may serve, in good faith, in a manner he reasonably believes to be in the best interests of the corporation and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances. In performing his duties, a director shall be entitled to rely in good faith on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by any of the following:

(1) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented.

(2) Counsel, public accountants or other persons as to matters which the director reasonably believes to be within the professional or expert competence of such person.

(3) A committee of the board upon which he does not serve, duly designated in accordance with law, as to matters within its designated authority, which committee the director reasonably believes to merit confidence.

(b) Effect of actual knowledge.—A director shall not be considered to be acting in good faith if he has knowledge concerning the matter in question that would cause his reliance to be unwarranted.

15 Pa. C.S.A. § 5712.

Directors can breach their duty of care to the nonprofit corporation by ignoring reports about serious mismanagement and failing to take appropriate action. *See, e.g. In re Lemington Home for Aged*, 777 F.3d 620, 629 (3d Cir. 2015) ("*Lemington (3d Cir.)*") (duty of care was breached where the directors ignored reports about serious mismanagement by the nonprofit's senior administrator and failed to fire the individual).

Directors or trustees of a nonprofit corporation must consider the best interests of the nonprofit corporation when discharging their duties. In considering the best interests of the corporation, directors or trustees may consider the following: (1) the effects of any action on any or all groups affected by such action, including creditors; (2) the short-term and long-term interests of the corporation; and (3) all other pertinent factors. 15 Pa. C.S.A. § 5715(a).

In the charter school context, a board's failure to discuss or consider the terms of management agreements, leases or contracts with the charter school's management company through an open and public process violates the Ethics Act and the NCL. *New Hope*, at 741. Contracts or transactions between the management company and the charter school are subject to the Ethics Act requirements. *Id.*

Here, Olney's Board members also cannot be said to have acted in good faith in the exercise of their fiduciary duties. Even if they were without knowledge of the problems associated with the PNC Bank transaction in 2011, they have certainly been on notice of the questionable legality of their actions since 2014. The CSO began taking steps in 2014 to demand that Olney's guarantees be removed and the intercompany loans end and be repaid, and then raised those issues in its renewal recommendation.⁹⁹ In complete disregard of those concerns, Olney went ahead with the Provident Bank guarantees in 2016 and then the Promissory Demand Notes in 2018.

All of the overlapping Board members had conflicts of interest and competing fiduciary duties with respect to the various transactions between Olney and the other entities. Yet none of them recused themselves from decisions regarding those transactions.

Because board members are entitled to rely on the advice of counsel and other professionals, Mr. Samms opined that Olney's Board did so regarding the transactions at issue

⁹⁹ See Ex. SD[O] 24, at 1-2; Ex. JE[O] 17.

here. However, this opinion was not credible because, although attorneys attended some board meetings, there was no evidence that they provided any advice regarding the transactions, and no Board member testified that he or she relied on any such advice.

3. Olney violated the Sunshine Act.

Compliance with the Sunshine Act is required by the CSL. 24 P.S. § 17-1716-A(c). It is also required by Olney's charter.¹⁰⁰

The Sunshine Act provides as follows:

The General Assembly finds that the right of the public to be present at all meetings of agencies and to witness the deliberation, policy formulation and decision making of agencies is vital to the enhancement and proper functioning of the democratic process and that secrecy in public affairs undermines the faith of the public in government and the public's effectiveness in fulfilling its role in a democratic society.

* * *

Official action and deliberations by a quorum of the members of any agency shall take place at a meeting open to the public unless closed under section 707 (relating to exceptions to open meetings), 708 (relating to executive sessions) or 712 (relating to General Assembly meetings covered).

* * *

In all meetings of agencies, the vote of each member who actually votes on any resolution, rule, order, regulation, ordinance or setting of official policy must be publicly cast and, in the case of roll call votes, recorded.

65 Pa. C.S. §§ 702(a), 704, 705.

The Sunshine Act also requires written minutes to be kept of all open meetings, which must include: (1) the date, time and place of the meeting; (2) the names of members present; (3) the substance of all official actions and a record by individual member of the roll call votes taken; and (4) the names of all citizens who appeared officially and the subject of their testimony. 65 Pa. C.S. § 706. Official actions that must be voted on in public include decisions

¹⁰⁰ See Ex. JE[O] 2 at 19, 81, 162, 239, 249.

on agency business, which include “the creation of liability by contract or otherwise.” 65 Pa. C.S. § 703.

To determine whether Olney violated the Sunshine Act, one need look no further than the testimony of Olney’s own legal expert, Mr. Samms. In order to reach his conclusion that the PNC Bank and Provident Bank transactions are unenforceable, Mr. Samms opined that Olney’s Board failed to comply with the Sunshine Act when the majority of the board members signed the various security agreements, guarantees and other financial instruments exposing Olney to indebtedness of over \$18 million for the PNC Bank transaction and over \$3 million for the Provident Bank transaction.¹⁰¹

Those transactions should never have happened to begin with, for the reasons discussed above, but since they did, they should have been approved by the Board at advertised public meetings and memorialized in publicly available board meeting minutes. None of the transactions are reflected in the board meeting minutes, and not a single witness testified that the Board took any action in public to approve the transactions. Moreover, the representations that Olney’s Board members made to Provident Bank in the executed Written Consents and the Secretaries Certificates that the Board duly adopted the resolutions on April 21, 2016 in accordance with applicable laws and all procedural rules specified in Olney’s bylaws are false, because those resolutions were not adopted at public board meetings.

In addition, the Board never approved any of the Forbearance Agreements at a public meeting, even though they continued to commit Olney to the indebtedness associated with those transactions. The public would have no idea that these enormous obligations existed or that they are in default.

¹⁰¹ See Tr. vol. 10, at 225:13-19; Tr. vol. 11, at 14:7-20.

These were not Olney's only Sunshine Act violations. The Boards of the ASPIRA-managed charter schools have common members, but not all of the members are voting members of each Board. The Boards have parent representatives who are only members with respect to their particular school. The Boards hold simultaneous meetings for all of the ASPIRA-managed schools but until February 2019, never conducted roll call votes to determine who was voting on which action for which charter school. This also violated the Sunshine Act, which requires a record by individual member of the roll call votes taken. 65 Pa. C.S. § 706(3). On other occasions, the outcome of votes is not reflected at all in the meeting minutes, other than the fact that someone put forward a motion and a second. This also violates the Sunshine Act

Other violations of the Sunshine Act also occurred regarding executive sessions for approximately five years, until the end of the 2015-16 school year. "The reason for holding the executive session must be announced at the open meeting occurring immediately prior or subsequent to the executive session." 65 Pa. C.S. § 708(b). Moreover, executive sessions may only be held to discuss personnel, matters related to collective bargaining, real estate matters, litigation strategy or consultation, or matters protected by confidentiality or privilege. 65 Pa. C.S. § 708(a). Olney's Board regularly violated these restrictions by failing to announce the purpose of executive sessions or by holding them for reasons prohibited by the Sunshine Act.¹⁰²

The Board also has delegated some of its functions to committees, including an Executive Committee and a Finance Committee. Neither of these committees met publicly. Further, as reflected in the various meeting minutes, the Board has also taken other actions in private that must occur in public, such as election of officers and the appointment of members.

A charter school's failure to comply with the Sunshine Act is a sufficient basis for nonrenewal of its charter. *Thurgood Marshall*, at 16.

¹⁰² See Ex. JE[O] 3; Ex. JE[O] 65, at 1-31; Ex. JE[S] 38-43.

4. Olney violated Highly Qualified Teacher requirements.

As also noted in Section II.A.4 above, Olney violated HQT requirements that were in place through the 2015-16 school year under the No Child Left Behind Act. All teachers teaching core academic subjects were required to be highly qualified by the end of the 2005-06 school year. 20 U.S.C. § 6319(a)(2). To be highly qualified, a teacher must hold a bachelor's degree, demonstrate competence in the core content areas taught and meet the CSL's certification requirements.¹⁰³ Based upon the RFRM reports and Olney's own calculations of HQT status, Olney failed to have 100% of its core subject area teachers highly qualified in the 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16 school years, in violation of both applicable law and its charter.¹⁰⁴

In one of its most recent opinions, CAB has declared that "HQT violations should be considered, but only if they constitute a part of a wider pattern of significant violations of law," when considering whether to renew a charter. *I-LEAD Charter School*, CAB Docket No. 2016-05 (Dec. 20, 2017) ("*I-LEAD CAB*"), at 29. In this case, there is such a wider pattern of significant violations of law.

5. Olney violated certification requirements.

As also noted in Section II.A.5 above, Olney violated certification requirements for special education staff. "Persons who provide special education and related services to children with disabilities in charter schools and cyber charter schools shall have appropriate certification, notwithstanding section 1724-A of the [CSL]." 22 Pa. Code § 711.5.

¹⁰³ See, e.g. Ex. JE[O] 11, at 12; Tr. vol. 1, at 196.

¹⁰⁴ See Ex. JE[O] 11-14, at the last page of each document; Ex. JE[O] 34, at 2; Ex. Olney 88; Tr. vol. 1, at 196-197.

Nevertheless, the vast majority of Olney's special education teachers were not appropriately certified in 2013-2104, 2014-15, 2015-16, 2016-17 and 2017-18.¹⁰⁵ This is especially troubling because Olney had an unusually high population of special education students in all of those years.¹⁰⁶

6. Olney violated requirements regarding student enrollment materials.

Public schools, including charter schools, are required to obtain five types of documentation from parents of new enrollees, consistent with various legal requirements. *See* 24 P.S. §§ 13-1302 (residency and school age), 13-1303a (immunizations), 13-1304-A (a) (sworn statement about suspension/expulsion); 22 Pa. Code § 11.11(e) (home language survey). However, they are not permitted to require any other enrollment documentation.

Olney's enrollment materials asked parents and prospective students for far more information than is legally permitted. The application form for the 2015-16 school year informs parents that admission is tentative pending receipt of all required documents and a placement test.¹⁰⁷ These enrollment requirements are improper for an ordinary charter school, and are even more inappropriate for a Renaissance charter school that has replaced a neighborhood catchment school. Olney's application packet requested transcripts, special education records, health assessments, social security numbers and race and ethnicity disclosures.

When Olney finally attempted to address these violations in its enrollment materials for 2016-17, it also removed the five documents that it is required to obtain, and continued to ask for

¹⁰⁵ *See* Ex. JE[O] 56-58, at 4; Ex. SD[O] 14, at 4; Ex. Olney 166, at 4; Tr. vol. 2, at 125-126, 131.

¹⁰⁶ *See* Section III.A below.

¹⁰⁷ *See* Ex. JE[O] 47.

information regarding the prospective students' citizenship status, race/ethnicity and social security number.¹⁰⁸

Beginning with the 2017-18 enrollment materials, these issues have been corrected. Nevertheless, they were persistent violations during the charter term.

7. Olney violated student discipline requirements.

Charter schools are subject to the Chapter 12 regulations governing student discipline. 24 P.S. § 17-1732-A(b). Due process requirements for all students to be suspended or expelled from school are found in 22 Pa. Code §§ 12.6 and 12.8, and those requirements are made applicable to charter schools by 24 P.S. § 17-1732-A(b).

Section 12.6 of the State Board of Education's regulations provides in pertinent part that: "Expulsion is exclusion from school by the governing board for a period exceeding 10 school days and may be permanent expulsion from the school rolls. Expulsions require a prior formal hearing under Section 12.8." 22 Pa. Code § 12.6."

Section 12.8 provides in pertinent part:

A formal hearing is required in all expulsions actions. This hearing may be held before the governing board or an authorized committee of the board, or a qualified hearing examiner appointed by the board. When a committee of the board or a hearing examiner conducts the hearing, a majority vote of the entire governing board is required to expel a student.

22 Pa. Code § 12.8(b). In the context of charter schools, "governing board" means "the board of trustees of a charter school." 22 Pa. Code § 12.16.

According to Olney's representations in its Renewal Application, seven students were expelled in the 2012-13 school year, three were expelled in the 2013-14 school year, and two

¹⁰⁸ See Ex. JE[O] 48.

were expelled in the 2014-15 school year.¹⁰⁹ However, according to the meeting minutes provided, Olney's Board only took action on the following expulsions during those school years: five during 2012-13 (all approved on January 30, 2013); one during the 2013-14 school year (approved on April 8, 2014); and zero during the 2014-15 school year.¹¹⁰ Thus, at least six expulsions were not approved by Olney's Board.

The regulations also provide as follows:

Each governing board shall adopt a code of student conduct that includes policies governing student discipline and a listing of students' rights and responsibilities *as outlined in this chapter*. This conduct code shall be published and distributed to students and parents or guardians. Copies of the code shall also be available in each school library.

22 Pa. Code § 12.3(c) (italics added).

Olney repeatedly removed students from the regular school environment due to disciplinary issues and placed them in what it called the Success Academy.¹¹¹ However, until the 2018 Student Handbook and Code of Conduct was approved on June 29, 2018 for the 2018-19 school year, Olney's code of conduct did not provide parents or students with any notice of Success Academy as a disciplinary consequence or with any information about a students' rights with respect to placement in Success Academy, including the right to have an informal hearing.¹¹²

Mr. Thompson admitted that parents "absolutely" should have been informed in the handbook of the procedures and requirements for placement in the Success Academy.¹¹³

¹⁰⁹ See Ex. JE[O] 34, at 2.

¹¹⁰ See Ex. JE[O] 3.

¹¹¹ See Tr. vol. 2, at 148:3-12; Tr. vol. 4, at 213:6-17, 143-146.

¹¹² See Ex. JE[O] 68; Tr. vol. 4, at 212:13-24; Ex. Olney 13, at 92; Tr. vol. 2, at 232:12-235:4.

¹¹³ See Tr. vol. 4, at 214-215.

The failure to provide notice to students of their rights related to Success Academy violated Chapter 12.

8. Olney violated requirements for English language learners.

Charter schools are required to comply with Chapter 4 of the State Board of Education regulations. Chapter 4 requires charter schools to “provide a program for each student whose dominant language is not English for the purpose of facilitating the student’s achievement of English proficiency and the academic standards 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.

Under requirements of the Elementary and Secondary Education Act (“ESEA”), 20 U.S.C. § 6301, *et seq.*, every State is required to ensure that English learners are receiving adequate instruction in order to develop their English language proficiency. “Each State plan shall demonstrate that the State has adopted English language proficiency standards that – (i) are derived from the 4 recognized domains of speaking, listening, reading, and writing; (ii) address the different proficiency levels of English learners; and (iii) are aligned with the challenging State academic standards.” 20 U.S.C. § 6311(b)(1)(F). “Each State plan shall demonstrate that local educational agencies in the State will provide for an annual assessment of English proficiency of all English learners in the schools served by the State educational agency.” 20 U.S.C. § 6311(b)(2)(G)(i). PDE has developed a Basic Education Circular that reflects these ESEA requirements.

Olney did not ensure that all enrolled ELLs took the ACCESS assessment, which is the English proficiency examination used in Pennsylvania. Multiple students did not take the ACCESS assessment during the 2015-16, 2016-17 and 2017-18 school year during the several months long testing window established by PDE, which violates the legal requirements for

ELLs.¹¹⁴ This is especially troubling because Olney had an unusually high population of ELLs in all of those years.¹¹⁵

III. OTHER ASSERTED DEFENSES

Olney has also raised various additional non-meritorious defenses.

A. Student Demographics

First, Olney seeks to blame its poor academic performance on the demographics of its student population, stressing that it has always had high percentages of historically underperforming students, including economically disadvantaged students, Hispanic/Latino students, English language learners, and special education students. However, this does not explain Olney's underperformance as compared to the School District as a whole.

Olney correctly notes that economically disadvantaged students tend to have substantially lower proficiency rates than students who are not economically disadvantaged. On a percentage basis, however, Olney has had *fewer* economically disadvantaged students than the School District:¹¹⁶

Economically Disadvantaged Students			
Year	Olney	School District	Difference
2015-16	52%	61%	-9%
2016-17	72%	74%	-2%
2017-18	67%	73%	-5%

This should have resulted in *higher* proficiency rates for Olney, not the lower rates it achieved.

¹¹⁴ See Ex. SD[O] 3-4, 6, 15, 26, at 13; Ex. JE[O] 31, at 12; Tr. vol. 1, at 202-206, 209-211.

¹¹⁵ See Section III.A below.

¹¹⁶ See Ex. JE[O] 30, JE[O] 31, SD[O] 26.

Similarly, Olney has more Hispanic/Latino students than the School District, but fewer Black students, and Hispanic/Latino students have had approximately the same or higher proficiency rates as Black students at Olney.¹¹⁷

Keystone Proficiency		Hispanic	Black
Literature	2015-16	13%	13%
	2016-17	14%	13%
	2017-18	13%	13%
Algebra I	2015-16	9%	5%
	2016-17	6%	4%
	2017-18	4%	3%
Biology	2015-16	6%	4%
	2016-17	4%	5%
	2017-18	4%	2%

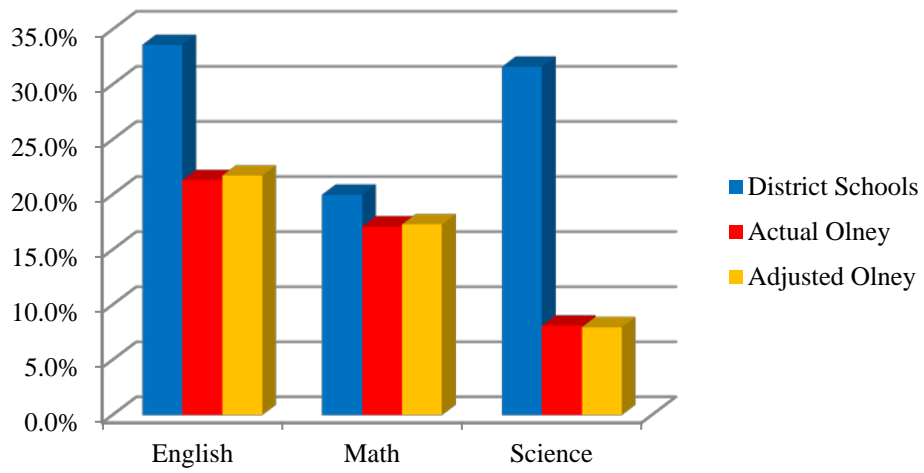
Olney also correctly notes that it has significantly higher percentages of English language learners (ELLs), and special education students than the School District as a whole. However, Olney's expert made no attempt to quantify the impact of these or any other any demographic differences.¹¹⁸ Thus, no evidence was presented to establish that Olney would have matched the School District's performance if it had the same demographics.

It is not surprising that Olney's expert made no effort to quantify the impact of demographic differences, because if such an analysis had been done, it is likely to have shown that having the same percentages of Hispanic/Latino students, ELLs, and special education students as the School District would have improved Olney's overall proficiency rates only slightly, to levels still below the School District's rates in math and still far below the School District's rates in English and Science. This is illustrated by the following charts:

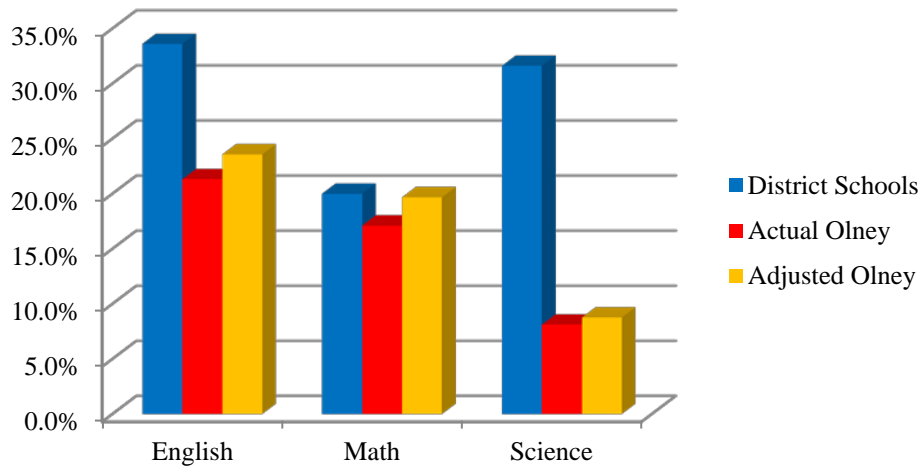
¹¹⁷ See Ex. JE[O] 30, at 4-6; Ex. JE[O] 31, at 5-7; Ex. SD[O] 26, at 6-8; Tr. vol. 1, at 140-143.

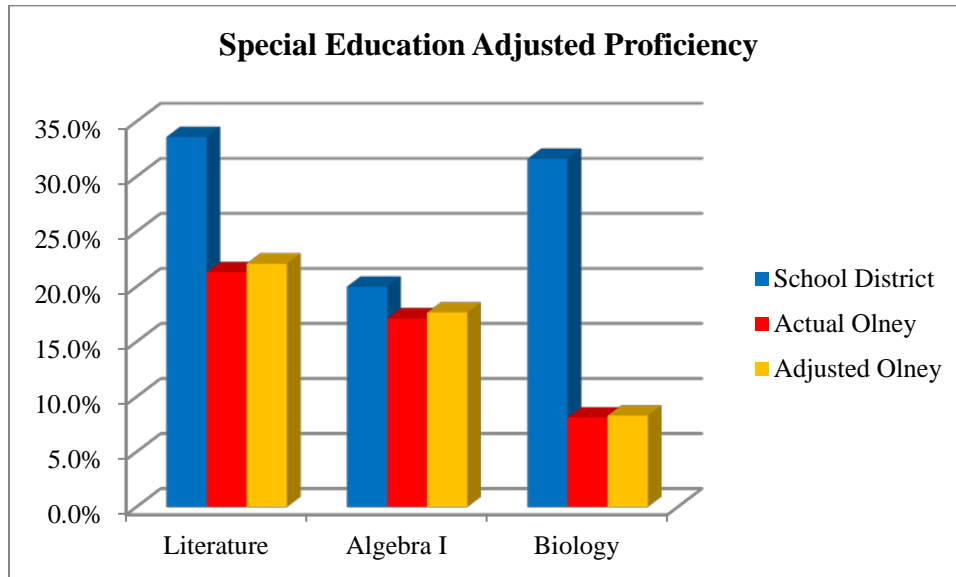
¹¹⁸ See Tr. vol. 13, at 235:23-239:17.

Hispanic/Latino Adjusted Proficiency



English Language Learners Adjusted Proficiency





The data in these charts is based on the most recent RFRM reports for Olney and the School District.¹¹⁹ The adjustments were calculated by reducing the number of Olney's tested students in each category to the percentage of all of its tested students that equaled the percentage of the School District's tested students in the same category. The adjusted proficiency rates were then determined based on these revised numbers of tested students in each group and Olney's average rates for each group, to approximate the overall results that Olney might have attained if it had the same percentages of Hispanic/Latino, English language learner, and special education students as the School District.¹²⁰

This analysis is necessarily imprecise, but it clearly illustrates that it would not be reasonable to simply presume that Olney's performance would have matched the School District's performance if its demographics were the same.

¹¹⁹ See Ex. JE[O] 14, HO[O] 124. The School District's RFRM report was not submitted by either party as an exhibit, but its data may be judicially noticed, because it is not subject to reasonable dispute and can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. See Pa. R. Evid. 201.

¹²⁰ See Ex. HO[O] 125 (detailing the calculations).

The impact of the demographic differences on Olney’s overall results is slight because (a) Olney’s also has many students who are not in the subgroups, and (b) the performance of the subgroups at Olney is significantly worse than their performance at the School District’s schools.

The School District’s Annual Charter Evaluation (“ACE”) reports show that Olney has not done as well as the School District with ELLs and special education students with Individualized Education Plans (“IEPs”), and has consistently been falling further behind:¹²¹

2015-16 Proficiency	Literature		Algebra I		Biology	
	ELL	IEP	ELL	IEP	ELL	IEP
School District	10%	7%	6%	3%	5%	3%
Olney	2%	3%	2%	3%	2%	1%
Difference	-8%	-4%	-4%	0%	-3%	-2%

2016-17 Proficiency	Literature		Algebra I		Biology	
	ELL	IEP	ELL	IEP	ELL	IEP
School District	10%	9%	7%	2%	8%	6%
Olney	1%	4%	2%	1%	2%	2%
Difference	-9%	-5%	-5%	-1%	-6%	-4%

2017-18 Proficiency	Literature		Algebra I		Biology	
	ELL	IEP	ELL	IEP	ELL	IEP
School District	35%	13%	13%	4%	25%	10%
Olney	7%	6%	1%	1%	1%	1%
Difference	-28%	-7%	-12%	-3%	-24%	-9%

The substantial differences for ELL students are especially troubling given Olney’s large concentration of Hispanic/Latino students.

Moreover, Olney’s argument disregards that the central purpose of Renaissance Initiative was to close the achievement gap for these underperforming student populations. Olney is not increasing achievement in those student groups as expected by its charter and the accountability systems.

¹²¹ See Ex. JE[O] 30, JE[O] 31, SD[O] 26.

In the 2013-14 school year, Olney failed to meet the Annual Measurable Objectives in Algebra I for all subgroups other than Asian students, and in Literature for any subgroup other than female students and Asian students. When the State began to report data for historically underperforming students (economically disadvantaged, ELLs and special education students), Olney did not have any success in closing the achievement gap with those students in Algebra I or Literature in 2014-15, 2015-16 or 2016-17. Some progress was made in Biology in those years, but never at the rate required by the State.

For the last three years, the CSO has been reporting Keystone Exam performance data for Olney's ELLs and special education students compared to those same subgroups of students being educated in School District schools who also take the Keystone Exams.¹²² This data for the 2015-16, 2016-17 and 2017-18 school years consistently shows that ELLs and special education students in School District schools are outperforming their counterparts at Olney by large margins, with the margin growing larger. In the 2017-18 school year, ELLs in School District schools outperformed ELLs at Olney as follows: 35% compared to 7% in Literature; 13% compared to 1% in Algebra I, and 25% compared to 1% in Biology. The extent of relative underperformance is also striking for special education students: 13% compared to 6% in Literature; 4% compared to 1% in Algebra I, and 10% compared to 1% in Biology.

Another relevant metric related to the education of ELLs is the new Future Ready Index indicator for English Language proficiency. In the 2017-18 school year, Olney did not meet the performance target for its ELLs in English Language Proficiency, as only 16.9% of those assessed with the ACCESS exam met the target, compared to 35.7% of ELLs statewide.

¹²² No ELL student who is in the first year of education in the United States is required to take the Keystone Exams. Special education students with significant cognitive disabilities are able to take the PASA, rather than the Keystone Exams.

For all of these reasons, Olney's contention that its poor academic performance is merely a reflection of demographic differences is simply not credible.

B. Special Admission Schools.

Olney also contends that data for special admission schools should be excluded from all comparisons of its performance to the School District as a whole. This may seem logical on the surface, but it does not withstand reasoned analysis, because excluding students at the best performing schools would be no less fair to the School District than excluding students at the worst performing schools would be to Olney. Neither would accurately reflect the actual population of students at School District schools.

The students at special admission schools are residents of Philadelphia who are entitled to attend School District schools. The fact that students can choose from more than one type of school in Philadelphia does not change the fact that they are all within the School District as a whole. Thus, the percentage of School District students who scored proficient or advanced on a test cannot be calculated by including some of the students and excluding others.

In other school districts that have only one high school, all of the students are included in the districts' proficiency rate, including those with the highest and lowest scores. The School District should not be treated differently merely because its students are distributed among many different schools.

Moreover, Olney did not present any evidence of what the District's proficiency rates would be without the special admission schools, or with any other schools removed.

Many previous decisions have approved comparisons to the School District as a whole (without excluding special admission schools), including CAB's recent opinion affirming the SRC's nonrenewal decision regarding Delaware Valley Charter High School. *See Delaware Valley Charter High Sch.*, CAB No. No. 2016-06 (June 8, 2017).

Accordingly, special admission schools should not be removed from comparisons of Olney to School District schools.

C. Alleged Racial Inequities

After the hearings ended, the Charter Schools requested and were granted admission of a PowerPoint presentation dated March 29, 2019 entitled Minority-Led Charter Schools Briefing (“Presentation”).¹²³ The Charter Schools contend that this Presentation proves that the School District is targeting minority-led charter schools for closure. However, the Presentation does not support this conclusion.

The Presentation provides information about the number of charter schools that have operated in the School District since 2007-08, including the number of schools that have been opened and closed, and the number of Renaissance charter schools.¹²⁴ The Presentation also provides some information from a third-party entity, the Center for Education Reform, containing national data from 2011 regarding the primary reasons why charter schools close. That same slide states: “All charter schools that have closed in Philadelphia were independently operated. Many charter schools led by Black and Latino CEOs are independently operated.”¹²⁵

The Presentation notes that there is not a dedicated non-profit charter support organization in Philadelphia, unlike in other major cities, to provide technical assistance and guidance to charter schools.¹²⁶

¹²³ See Ex. Olney 300; Ex. HO[O] 109; Ex. Stetson 277; Ex. HO[S] 115.

¹²⁴ See Ex. Olney 300, at 4; Ex. Stetson 277, at 4.

¹²⁵ See Ex. Olney 300, at 5; Ex. Stetson 277, at 5.

¹²⁶ See Ex. Olney 300, at 9; Ex. Stetson 277, at 9.

The Presentation states that “The CSO has been committed to taking steps to address inequities in our systems”¹²⁷ However, rather than evidencing a discriminatory purpose, this shows a commitment to help independently managed minority-led charter schools overcome the additional challenges they face.

Moreover, unlike the schools described in the Presentation, the Charter Schools in these proceedings are not independently operated. To the contrary, they are managed by ASPIRA. As such, they have access to ASPIRA and its resources, along with the Central Office team now employed by Stetson.

The Presentation also provides data about the charter schools in Philadelphia that have closed since the 2014-15 school year, whether they were minority-led schools, and the primary reason for the closure. Out of the ten charter schools that closed since 2014-15, 60% were “minority-led.”¹²⁸ The Presentation does not state how that percentage compares to the overall percentage of charter schools that are minority-led in Philadelphia.

Additional charter schools have entered into surrender agreements following nonrenewal recommendations. A surrender agreement reflects the charter school’s ability to remain in operation but with specific targets that must be met. Of the four charter schools that have done so, 75% were minority-led.¹²⁹ The Presentation also does not state how that percentage compares to the overall percentage of charter schools that are minority-led in Philadelphia.

¹²⁷ See Ex. Olney 300, at 10; Ex. Stetson 277, at 10.

¹²⁸ See Ex. Olney 300, at 6; Ex. Stetson 277, at 6.

¹²⁹ See Ex. Olney 300, at 7; Ex. Stetson 277, at 7.

Five charter schools are in the midst of nonrenewal proceedings, including Olney and Stetson. Of those five charter schools, 80% are minority-led.¹³⁰ The Presentation also does not state how that percentage compares to the overall percentage of charter schools that are minority-led in Philadelphia.

The Equal Protection Clause prohibits “selective enforcement” of a law based on an unjustifiable standard. *See PG Publishing Co. v. Aichele*, 705 F.3d 91, 115 (3rd Cir. 2013). To establish such selective-enforcement, a charter school is required to prove that the CSL was applied unequally to those who are entitled to be treated alike, with a discriminatory purpose.

The Charter Schools have not presented any evidence that a higher percentage of minority-led charter schools were closed than the overall percentage of minority-led charter schools in Philadelphia. They also have not presented any evidence that they were treated differently than non-minority-led charter schools with sufficiently similar deficiencies. They also have not presented any evidence that their nonrenewal recommendations were made for a discriminatory purpose.

Accordingly, the Charter Schools have not carried their burden to prove selective enforcement or any other unlawful discrimination.

D. School Advisory Council

The Charter Schools also contend that the BOE is required to renew their charters because the School Advisory Councils (“SACs”) contemplated by the Renaissance Initiative are no longer operational. This has no support in the charters.

The SACs were conceived by the School District specifically for the Renaissance Initiative. The Renaissance documents refer to the SAC as an integral part of the identification of

¹³⁰ See Ex. Olney 300, at 8; Ex. Stetson 277, at 8.

Renaissance schools and the matching of turnaround teams for those schools. While there was also an anticipated monitoring role for the SACs once the charters were issued, the SACs had no veto power over a decision to renew or not renew a charter.

The SAC was entitled to *recommend* nonrenewal or revocation if it became dissatisfied with a school's performance. However, such a recommendation was not required for nonrenewal or revocation of a Renaissance charter. To the contrary, the charter stated as follows: "The School District reserves the right to not renew this Charter at the end of the Term or to revoke this Charter at any time during the Term in accordance with 24 P.S. § 17-1729-A and Applicable Laws."¹³¹

Olney's SAC has not been operational for some time, even before Olney came up for renewal in the 2015-16 school year. However, the School District cannot compel or require parents to sit on a SAC or remain active in a SAC. Olney did not present any evidence that it was harmed or placed at a disadvantage as a result of the SAC not being in place when it was considered for renewal or at any other time. Nor did Olney present any evidence that it or ASPIRA: (a) complained to the School District about the lack of a SAC; (b) asked the School District to take any steps to reconstitute the SAC; or (c) took any steps themselves to reconstitute or maintain the SAC.

The BOE is entitled to decide whether or not to renew Olney's charter notwithstanding the absence of a currently operational SAC and the lack of a nonrenewal recommendation from such a SAC.

¹³¹ See Ex. JE[O] 2, at 24; Ex. JE[S] 2, at 30.

E. Comparison to Hostos and Pantoja.

Olney also contends that its assumption of liabilities and transfer of funds for the benefit of other ASPIRA managed schools should be disregarded because Hostos and Pantoja did the same things and the CSO recommended renewal of their charters with conditions. This is wrong for several reasons.

First, the BOE's decision regarding Olney will be based on the evidence presented at this hearing, not on the CSO's recommendation.

Second, the financial irregularities were not the only issues considered for Olney and were not the only issues considered for Hostos and Pantoja. For example, Olney is a Renaissance school but Hostos and Pantoja are not. In addition, Olney is operating in a School-District-owned building but Hostos and Pantoja are not. And the academic outcomes at Hostos and Pantoja are better than they are at Olney.

Third, the CSO recommended more than 13 conditions for renewal of the Hostos and Pantoja charters, and the record does not reflect that any of those conditions have been accepted or satisfied. As a result, it is entirely possible they also might be recommended for nonrenewal.

F. Comparison to Mastery Charter Schools

Olney also attempts to legitimize the intertwined structure and practices of the ASPIRA-managed schools, by asserting that they are similar to the structure and practices of Mastery Charter Schools, which have not been recommended for nonrenewal.

Mastery Charter High School ("MCHS") serves as the management company for several other Mastery charter schools and receives a management fee from them for its

services.¹³² This is somewhat analogous to ASPIRA serving as the Charter Schools' management company, but there are significant differences.

MCHS' board is distinct from the unified board that operates the other Mastery charter schools.¹³³ This separates the control of MCHS from the control of the MCHS-managed schools. The MCHS-managed schools also do not have any contractual obligations with each other and are not operating in the same manner as the charter schools in the ASPIRA-managed network.¹³⁴

Messrs. Chao and Krain testified that to the best of their knowledge, the Mastery charter schools are not transferring funds to each other, and have not pledged security interests in debt or other financing transactions entered into by another one of the charter schools.¹³⁵

According to Mr. Chao, whether or not it would be problematic for charter schools within the same management system to purchase services from one another would depend on the details of the arrangement.¹³⁶ If the Mastery schools' arrangements or actions had been similar to those of the ASPIRA-managed charter schools, the CSO would have flagged those issues.¹³⁷

Mr. Krain reviewed the general ledger, 990s and other financial documents of the Mastery schools as part of the OAS's review for each charter school's renewal. He conducted

¹³² See Tr. vol. 1, at 61:13-16, 89:16-23; Tr. vol. 16, at 337:19-23.

¹³³ See Tr. vol. 1, at 61:13-62:1.

¹³⁴ See Tr. vol. 1, at 61:13-62:6, 81.

¹³⁵ See Tr. vol. 1, at 81:8-82:2, 89:16-90:5; Tr. vol. 3, at 210:11-212:8; Tr. vol. 16, at 72:11-74:1.

¹³⁶ See Tr. vol. 1, at 62:8-63:7.

¹³⁷ See Tr. vol. 1, at 82:10-14.

this review with the same expectations and standards as when he reviewed the ASPIRA schools' transactions, and he did not identify any concerns with Mastery's structure or any financial transactions between the schools.¹³⁸ In contrast to the ASPIRA-managed schools:

- There were no deposits going from one Mastery-operated charter school to another;¹³⁹
- When joint purchasing or other cost sharing occurred, it was done through properly documented transactions;¹⁴⁰
- The flow-through items listed on MCHS' 990s were grants passing through MCHS to the various MCHS-managed schools;¹⁴¹ and
- MCHS charges a flat percentage as its management fee, without adding any additional direct service costs or staffing costs.¹⁴²

Given these distinctions, the School District's criticisms of the ASPIRA-managed schools' structure, operations and financial transactions are not undermined by or inconsistent with the absence of similar criticisms regarding the MCHS-managed schools.

G. Comparison to Richard Allen Charter School.

The Charter Schools also sought to compare the charter status of Richard Allen Preparatory Charter School ("Richard Allen") to their own, presumably because the School District has settled its nonrenewal proceedings against Richard Allen.

¹³⁸ See Tr. vol. 16, at 81:22-82:23, 94:8-12.

¹³⁹ See Tr. vol. 16, at 94:23-95:1.

¹⁴⁰ See Tr. vol. 16, at 71:19-74:1.

¹⁴¹ See Ex. Olney 153-155; Ex. Stetson 151-153; Tr. vol. 16, at 78:9-81:11.

¹⁴² See Tr. vol. 15, at 279:10282:23; Tr. vol. 16, at 87:19-88:7.

The Charter Schools were unable to articulate any reason why what happened in the Richard Allen proceeding is relevant to the facts at issue here. The most they could say is that Richard Allen was in the same renewal cohort, meaning that the CSO conducted its evaluations of all three schools in the same time frame.¹⁴³ But the issues here concern whether there are sufficient grounds for nonrenewal of the Charter Schools' charters, not whether there were sufficient grounds for nonrenewal of Richard Allen's charter.

Accordingly, evidence of what happened in the Richard Allen proceedings is not relevant, because it has no identified tendency to make a fact of consequence here more or less probable than it would be without the evidence. *See* Pa. R. Evid. 401.

H. Hearing Process Issues

Olney has also made numerous arguments attacking this nonrenewal process, in an attempt to prevent the BOE from reaching a decision on the merits. None of these process arguments are well founded.

1. The Charter's Notice Provision

Olney's charter identifies persons to whom notices must be sent "when notices are required under this Charter."¹⁴⁴ The person identified for notices to Olney was Alfredo Calderon (ASPIRA's CEO). Olney contends that this entire proceeding is invalid because the School District failed to prove that it served Resolution SRC-8 upon Mr. Calderon.

This is incorrect, because Resolution SRC-8 was not a notice required by the charter.¹⁴⁵ To the contrary, the charter said nothing at all about notice of nonrenewal proceedings. That was

¹⁴³ *See* Tr. vol. 15, at 279:10-282:3-20.

¹⁴⁴ *See* Ex. JE[O] 2, at 29.

¹⁴⁵ The Charter required a variety of notices, such as notice of Olney's Board members' names and contact information (Ex. JE[O] 2, at 8, § III.K.1), notice of the Board's meetings (*Id.*

left to the CSL, which requires notice to Olney's Board, not the CEO of Olney's management company. *See* 24 P.S. § 17-1729-A(c).

Moreover, Olney has not established that it was prejudiced in any way by this purported noncompliance with the charter's notice provision. Nor has Olney provided any legal authority for its position that such noncompliance would render this entire proceeding void.

2. Evidence Regarding the CSO's Analysis

Olney spent much of the hearing attacking the CSO's methodology and the conclusions it reached in its Renewal Recommendation Report.

These criticisms reveal a fundamental misunderstanding of this hearing process. The CSO used its internal protocols to evaluate all charter schools that were up for renewal and made its recommendations to the SRC. At a public meeting, the SRC decided that a nonrenewal hearing was warranted for the reasons specified in Resolution SRC-8. However, whether Olney's charter will actually be renewed or not is a decision that remains to be made by the BOE *based on the evidence presented at the hearing*, not based on the CSO's Renewal Recommendation Report. Thus, the CSO's analysis is immaterial at this stage.

3. Previously Unavailable Evidence

At various times during the hearing process, Olney's Counsel objected to the admissibility of performance data that did not exist until after Resolution SRC-8 was adopted, arguing that it was beyond the scope of the asserted charges. At the same time, however, he

at 8, § III.K.2), notice of requests for student records (*Id.* at 16-17, § VIII.A), notice of payments made for ineligible students (*Id.* at 21, § X.C.4.e), notice of insurance coverage changes (*Id.* at 22, § XIV.A.1), notice of claims (*Id.* at 25, § XVI.A.4), and notice regarding certifications (*Id.* at 26, § XVII.B), but it contained no provision requiring notice of nonrenewal proceedings.

repeatedly relied upon subsequent information that he considered favorable to Olney's position.¹⁴⁶ He even offered one such exhibit after the hearing was concluded.¹⁴⁷

The CSL requires a nonrenewal notice to state the asserted grounds with "reasonable specificity," but not with *absolute* specificity. 24 P.S. § 17-1729-A(c). Resolution SRC-8¹⁴⁸ provided fair notice to Olney that poor student performance would be a principal component of the School District's case. Moreover, the CSL does not restrict consideration of student performance to whatever data is specifically cited in a hearing notice. *See* 24 P.S. § 17-1729-A(d) (permitting supplementation of the record even in an appeal to CAB "if the supplemental information was previously unavailable" and allowing consideration of "student performance . . . *in addition to the record.*") (emphasis added); *see also Delaware Valley*, at 22-23 (relying on such supplemental information). Accordingly, Olney should have anticipated that updated student performance data would be presented if and when it became available.

In addition, Olney actually knew well in advance of the hearing that subsequent information would be used. In fact, Olney *agreed to joint exhibits* that included such information 41 days before the hearing began.¹⁴⁹ Olney also submitted numerous exhibits of its own that included such information.¹⁵⁰ Thus, Olney was provided with a reasonable opportunity to prepare and present a defense to the updated information.

Under these circumstances, Olney was not deprived of due process regarding the previously unavailable evidence. *See Pocono Mountain Charter Sch., Inc. v. Pocono Mountain*

¹⁴⁶ *See* Tr. vol. 2, at 234:9-13; Tr. vol. 8, at 69:1-16.

¹⁴⁷ *See* Ex. Olney 300.

¹⁴⁸ *See* Ex. JE[O] 1.

¹⁴⁹ *See* Ex. HO[O] 18; Ex. JE[O] 10, 16, 21, 23, 42, 54, 67, 80, 93, 96, 107.

¹⁵⁰ *See* Ex. Olney 5, 13, 14, 15, 23, 32, 33, 50, 52, 53, 56, 57, 78, 95, 118, 124, 133, 164, 172, 182, 208.

Sch. Dist., 88 A.3d 275, 285-86 (Pa. Cmwlth. Ct. 2014) (“*Pocono Mountain (Cmwlth.)*”); *Barasch v. Pennsylvania Pub. Util. Comm’n*, 546 A.2d 1296, 1305 (Pa. Cmwlth. Ct. 1988).

Moreover, when exercising its discretion, the BOE is required to consider whether nonrenewal would serve the fundamental purpose of the CSL to improve student learning. *See New Hope*, at 739. This includes consideration of whether Olney’s students would be likely to receive a better education elsewhere or at the same school under different management. For this analysis, it is important to weigh most current information.

4. Hearsay

The Charter Schools also repeatedly contended that hearsay is admissible in charter nonrenewal hearings. However, the law says otherwise.

The Local Agency Law applies to charter nonrenewal hearings under the CSL. *See* 24 P.S. § 17-1729-A(c); 2 Pa. C.S.A. §§ 551, *et seq.* Accordingly, the local board of school directors is not “bound by technical rules of evidence” at such hearings. *See* 2 Pa. C.S.A. § 554.

However, because the parties have a right to cross-examine adverse witnesses, the general prohibition against admission of hearsay is not just a “technical” rule of evidence and must be followed. *See Walker v. Unemployment Comp. Bd. of Review*, 367 A.2d 366, 370 (Pa. Cmwlth. Ct. 1976); *accord, Cambria v. Board of Sch. Dirs.*, 88 A.3d 1100 (Pa. Cmwlth. Ct. 2014) (unpublished); *see also* 2 Pa. C.S.A. § 554 (“Reasonable examination and cross-examination shall be permitted.”).

Accordingly, in an administrative hearing such as this:

(1) hearsay evidence, properly objected to, is not competent evidence to support a finding of fact; (2) hearsay evidence admitted without objection will be given its natural probative effect and may support a finding of fact if it is corroborated by any competent evidence in the record, but a finding of fact based solely on hearsay will not stand.

Walker, at 370.

Here, the School District objected to certain testimony and exhibits as hearsay, and when the Charter Schools could not establish that an exception applied, the objections were properly sustained.

5. Expert Sources and Reports

a. Inadmissible evidence does not become admissible merely because an expert relies upon it.

The Charter Schools moved for admission of numerous documents relied upon by their experts, Dr. Schuh and Mr. Samms.¹⁵¹ The School District objected to the documents as hearsay, and the objection was sustained, subject to reconsideration based on the parties' post-hearing submissions.¹⁵²

The Charter Schools contend that such documents relied upon by an expert are admissible if experts in the particular field would reasonably rely on them. However, this misconstrues the applicable law.

The Pennsylvania Rules of Evidence provide that:

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible *for the opinion to be admitted*.

Pa. R. Evid. 703 (emphasis added). In appropriate circumstances, this allows an expert's *opinion* to be admitted even if it is based on inadmissible evidence. But it does not convert whatever the expert relied upon into admissible evidence. To the contrary,

When an expert testifies about the underlying facts and data that support the expert's opinion and the evidence would be otherwise inadmissible, the trial judge upon request must, or on the judge's own initiative may, instruct the jury to

¹⁵¹ See Ex. Olney 25, 30-31, 69, 72, 144, 148, 210-211, 254, 276-277; Ex. Stetson 18, 24, 25, 54, 142, 146, 101, 194, 235, 248, 249.

¹⁵² See Tr. vol. 15, at 256:22-266:16; Tr. vol. 16, at 372:5-374:8.

consider the facts and data only to explain the basis for the expert's opinion, and *not as substantive evidence*.

Id. cmt. (emphasis added) (also repeated verbatim in Pa. R. Evid. 705 cmt.).

The cases the Charter Schools cited in their post-hearing memoranda do not support their argument that the underlying evidence becomes admissible when relied upon by an expert. Instead, they held only that an expert may rely on inadmissible facts or data if they are a type reasonably relied upon by experts in the particular field. *See Commonwealth v. Thomas*, 282 A.2d 693, 698 (Pa. 1971); *Primavera v. Celotex Corp.*, 608 A.2d 515 (Pa. Super. Ct. 1992). This is the same principle that Rule 703 codifies, as quoted above. In other words, these cases held only that the expert's *opinion* is admissible, not the evidence upon which the expert relied.¹⁵³

Although one recent case that the Charter Schools did not cite loosely referred to hearsay relied upon by an expert as "admissible," it made clear that such hearsay could be used only to explain the basis for the expert's opinion, not as substantive evidence. *See Condemnation by Pa. Tpk. Comm'n v. Tarlini*, 185 A.3d 1177, 1183-84 (Pa. Cmwlth. Ct. 2018) ("the trial judge upon request must, or on the judge's own initiative may, instruct the jury to consider the facts and data only to explain the basis for the expert's opinion, and not as substantive evidence.") (quoting Pa. R. Evid. 705 cmt.)

Thus, the documents relied upon Dr. Schuh and Mr. Samms were correctly made part of the record but not admitted as substantive evidence.

¹⁵³ The Charter Schools also cited additional cases at the hearing that were not included in their post-hearing memoranda. *See Lower Makefield Tp. v. Lands of Dalgewicz*, 4 A.3d 1114 (Pa. Cmwlth. Ct. 2010); *In re Glosser Bros., Inc.*, 555 A.2d 129 (Pa. Super. Ct. 1989); *Kearns by Kearns v. DeHaas*, 546 A.2d 1226 (Pa. Super. Ct. 1988); *Bolus v. United Penn Bank*, 525 A.2d 1215 (Pa. Super. Ct. 1987); *Steinhauer v. Wilson*, 485 A.2d 477 (Pa. Super. Ct. 1984). However, these cases also go no further than Rule 703.

b. An expert report is inadmissible hearsay.

The reports of the Charter Schools' experts are also clearly hearsay, because they were offered to prove the truth of their assertions and were not statements made while testifying at the hearing. *See* Pa. R. Evid. 801(c). Under certain exceptions, such hearsay is admissible if the declarant testifies and is available for cross-examination. *See* Pa. R. Evid. 803.1. However, none of those exceptions apply here, because none of the reports was offered as a prior inconsistent statement, a statement that identified a person or thing, or content that the expert was unable to remember at the hearing. *Id.*

Because the reports were prepared for litigation, they also are not admissible under the business records exception to the hearsay rule. *Pompa v. Hojancki*, 281 A.2d 886, 888 (Pa. 1971); *accord*, *Commonwealth v. May*, 898 A.2d 559, 565 n.12 (Pa. 2006).

Nevertheless, the Charter Schools contend that the reports are admissible because the experts were subject to cross-examination at the hearing. In their attempt to support this assertion, the Charter Schools overgeneralized case law that does not apply to their expert reports. For example, they cited *dicta* in an eminent domain case stating that “[t]raditionally, an expert report constitutes inadmissible hearsay unless the expert who prepared the report is available for cross-examination regarding the accuracy and reliability of his opinion.” *Lower Makefield*, at 1122. As its sole basis for this proposition, *Lower Makefield* cited a previous case that does not support the Charter Schools' position.¹⁵⁴ *See Columbia Gas Transmission Corp. v. Piper*, 615 A.2d 979 (Pa. Cmwlth. Ct. 1992). To the contrary, *Columbia Gas* held that expert reports were not admissible under the business records exception to the hearsay rule, thereby confirming by implication that they are inadmissible hearsay unless an exception applies.

¹⁵⁴ *Lower Makefield* also cited “Pa.R.E. 810(c),” which does not exist and never has. It probably meant to cite Rule 801(c), which merely provides the definition of hearsay described above.

Essentially, the Charter Schools are relying upon case law regarding certain types of business records that contain both recorded facts and expert opinions, such as hospital records. The courts have developed a different, hybrid approach for those. For example, a hospital report that qualifies as a business record is admissible to show the facts of hospitalization, symptoms, and treatment, but not for any medical opinions it contains unless the doctor who prepared the report is available for in-court cross-examination regarding the accuracy, reliability, and veracity of his or her opinions. *See Commonwealth v. McNaughton*, 381 A.2d 929, 931 (Pa. Super. Ct. 1977). This adds an additional *hurdle* for records which would otherwise be admissible under the business records exception to the hearsay rule, because it would be unfair for the exception to include expert opinions without any opportunity for cross-examination. It does not create an additional *exception* for reports that are not business records in the first place, such as expert reports prepared for litigation. *See Pompa*, at 888.

Accordingly, the Charter Schools' expert reports were correctly made part of the record but not admitted as substantive evidence.

6. Post Hearing Attacks on the Validity of this Proceeding

The Charter Schools also raised several arguments in post-hearing motions, and repeated them in their post-hearing memoranda of law, in an effort to invalidate this entire proceeding and start all over again.¹⁵⁵ All of these arguments were also without merit.¹⁵⁶

a. Transition from SRC to BOE

The Charter Schools first contended that these proceedings are invalid because the SRC adopted the resolutions pursuant to which the hearings were commenced and the SRC no longer

¹⁵⁵ See Ex. HO[O] 115, 118; Ex. HO[S] 121, 124.

¹⁵⁶ The rulings on the Charter Schools' arguments are summarized below, but in some cases, more detail is provided in the actual rulings. See Ex. HO[O] 121; Ex. HO[S] 127.

exists. This contention was correctly rejected because the BOE is the SRC's successor in these proceedings. *See* 24 P.S. § 6-696(n) ("after dissolution the board of school directors shall have the powers and duties of the School Reform Commission").¹⁵⁷ The Charter Schools have not cited any authority for the proposition that the BOE is not entitled to implement resolutions adopted by its predecessor board.

The BOE will decide whether or not to renew the charters based on the evidence presented at the hearings, not based on the information presented previously to the SRC. *See Graystone (Cmwlth.)*, at 142. Thus, the change in composition of the School District's governing board will not impair the BOE's ability to fairly decide the outcome of this proceeding.

b. Request for Recusal

The Charter Schools also contended that I should have recused myself as the hearing officer because Olney or ASPIRA, the School District and a lender were represented in different matters by other lawyers at a law firm that I retired from three years before my appointment in these matters. There was no basis for recusal on those grounds, because I had no knowledge of or involvement in the alleged representations and have no continuing affiliation with the former firm.¹⁵⁸

The Charter Schools also asserted that I should have recused myself because I am an attorney for the School District. By this, they incorrectly implied that I am an *advocate* for the School District. This mischaracterizes a hearing officer's role. In order to be qualified for selection as a hearing officer, one must engage in the School District's public procurement process for legal services. However, when responding to such requests for qualification, I

¹⁵⁷ *See* Ex. HO[O] 121; Ex. HO[S] 127.

¹⁵⁸ *See* Tr. vol. 9, at 267:14-268:21, Tr. vol. 10, at 5:17-8:21.

expressly limit my proposed role to serving as a hearing officer and advising the BOE, regarding charter school proceedings and employee termination matters.

In charter school proceedings, lawyers for the School District are engaged and supervised by the Office of Legal Counsel (“OLC”). However, hearing officers are appointed directly by the BOE instead, and are supervised by the BOE’s Board President and Chief of Staff.¹⁵⁹ This helps protect the hearing officer’s independence and objectivity by separating control of the advocacy and adjudicatory functions. Accordingly, I do not represent the School District in the sense that the Charter Schools implied. Instead, I act as an administrative officer and adviser to assist the BOE in carrying out its adjudicatory responsibilities.

c. Previous Non-Renewal Hearings

The Charter Schools also contented that I must be biased because I recommended non-renewal in three of the many other cases in which I have served as a hearing officer. This seems to presume, without any evidence whatsoever, that non-renewal was not fairly warranted on the merits of those cases. To the contrary, CAB recently affirmed nonrenewal in two of the three cases. *See Eastern Univ. Acad. Charter Sch. v. School Dist. of Phila.*, CAB No 2018-04 (Aug. 14, 2019) (holding that “the record is devoid of any evidence of bias by the Hearing Officer,” the findings were “supported by objective evidence of record” and the same framework “was applied evenly to every charter school”); *Khepera* (holding that “the record strongly supports the SRC’s revocation of Khepera Charter School’s Charter.”). CAB disagreed with some of the SRC’s findings in the earliest of the three cases after considering post-hearing improvements, but found no due process violations or lack of objectivity. *See Community Acad.*

¹⁵⁹ See Ex. HO[O] 1; HO[S] 1.

d. Unjustified Continuance Requests

The Charter Schools also contended that requests for continuances were unfairly denied. To understand how preposterous this is, one must consider the sequence of pertinent events.

When I was appointed in these matters, I contacted Counsel by email and spoke with them in an initial conference call on December 11, 2018. It was agreed in that call, among other things, that (a) the parties would exchange their lists of witnesses and exhibits, pre-marked copies of their exhibits, expert witness reports and resumes, and requests for subpoenas on January 25, 2019, (b) stipulations regarding facts and/or exhibits would be submitted by February 5, 2019, and (c) the hearings would begin on February 12, 2019.¹⁶⁰

However, on February 4, 2019 (about a week before the hearings were to begin), the Charter Schools' Counsel requested a 60-day continuance to avoid any potential impact on a refinancing transaction. This request was denied, because it would not have been appropriate for the BOE (through its Hearing Officer) to participate in an effort to avoid alerting a lender to these nonrenewal proceedings if that would be material to the lender's decision to close the transaction, and there was no need to delay the proceedings if the disclosure would not be material to the lender's decision. Nevertheless, the start of the hearings was postponed by 15 days, because the Charter Schools' Counsel had conflicting court appearances on some of the previously scheduled dates.¹⁶¹

On February 7, 2019 (three days after the 60-day continuance was denied), the Charter Schools terminated their Counsel and asked a different firm to represent them at the hearings.¹⁶² The Charter Schools' current Counsel agreed in writing to start the hearings on March 11, 2019,

¹⁶⁰ See Ex. HO[O] 1-7; Ex. HO[S] 1-7.

¹⁶¹ See Ex. HO[O] 22-23, 25-28; Ex. HO[S] 22-23, 25-28.

¹⁶² See Ex. HO[O] 30-33; Ex. HO[S] 30-33.

“which allows the School District of Philadelphia to conclude the hearings in a timely fashion and allows our firm time to prepare.”¹⁶³ This additional delay was unwelcome but tolerable, so I approved the substitution of counsel on that basis and continued the hearing to the requested dates.¹⁶⁴

On March 7, 2019 (two weekdays before the hearings were set to begin) the Charter Schools requested an additional two-week postponement in order to subpoena files from two law firms that had handled financial transactions for them in 2011 and 2016.¹⁶⁵ This request was denied for several reasons: (a) the delay would likely have been much longer than two weeks, because the School District’s Counsel was unavailable throughout most of April 2019, (b) the Charter Schools had several years to obtain whatever documents they wanted from their previous law firms, (c) the Charter Schools’ former Counsel was advised on December 10, 2018 that the hearings would begin in February 2019, and (d) the Charter Schools’ current Counsel agreed to begin the hearings on March 11, 2019, yet (e) the Charter Schools waited until the hearings were about to begin to seek the documents by subpoena. This was especially egregious because the deadline for requesting subpoenas was January 25, 2019. Notwithstanding their procrastination, the Charter Schools were permitted to subpoena the documents and produce them while the hearings were in progress. This eliminated any need for the requested continuance.¹⁶⁶

The parties’ initially estimated that consecutive hearings for Olney then Stetson could be completed in a total of six to ten days, starting in February 2019. Ultimately, they were completed in 16 days, starting in March 2019. In addition, Olney was permitted to supplement its

¹⁶³ See Ex. HO[O] 34; Ex. HO[S] 34.

¹⁶⁴ See Ex. HO[O] 36-38; Ex. HO[S] 36-38.

¹⁶⁵ See Ex. HO[O] 58; Ex. HO[S] 58.

¹⁶⁶ See Ex. HO[O] 59; Ex. HO[S] 59.

lists of exhibits and witnesses 20 times (including 15 times after the hearings began) and Stetson was permitted to supplement its lists of exhibits and witnesses 22 times (including 17 times after the hearings began), which belatedly added 30 new witnesses and 277 new exhibits (some of which were hundreds of pages long).¹⁶⁷ The Charter Schools were not precluded from calling any witness, concluding the examination of any witness, or presenting any admissible exhibits. Under the circumstances, they were provided ample time and extraordinarily flexibility to prepare for and present their defense.

Counsel for the Charter Schools correctly noted that when discussing the likelihood that a continuance would delay the hearing for more than the requested two weeks, I observed that “if nonrenewal is then granted, the delay could deprive [the Charter Schools’] students of the education they deserve for an additional year.”¹⁶⁸ However, he ignored the “if” when contending that this comment prejudged the result.

e. Proposed Intervention by ASPIRA

The Charter Schools also complained that a petition to intervene by ASPIRA was denied, but that ruling was also clearly justified, because (a) there is no statutory authority for including additional parties in nonrenewal proceedings, (b) ASPIRA’s interests were adequately represented by the Charter Schools, (c) ASPIRA unduly delayed applying for intervention, and (d) intervention would have unduly delayed the proceedings.¹⁶⁹

¹⁶⁷ See Ex. HO[O] 24, 61, 65, 67-68, 70-72, 74-75, 77, 84, 87, 89-91, 101-103, 111 (supplemented lists); Ex. HO[S] 24, 61, 65, 67-71, 73-74, 76, 83, 86, 88-90, 93, 101-103, 105, 117 (supplemented lists); *see, e.g.*, Ex. Olney 58, 100, 289, 292 (lengthy exhibits); Ex. Stetson 43, 91, 263, 266 (lengthy exhibits).

¹⁶⁸ See HO[O] 59, at 2; HO[S] 59, at 2.

¹⁶⁹ See HO[O] 59, at 1-2; HO[S] 59, at 1-2.

f. Last Minute Requests for Documents

I promptly issued every subpoena that the Charter Schools requested until they asked for two more in the final days of the hearing, when the time available for the School District to assemble and produce the requested documents was extremely limited.¹⁷⁰

One of the subpoenas requested documents from Mayer Krain and the other requested all of the CSO's files regarding the Charter Schools. Mayer Krain testified about his documents on March 15th,¹⁷¹ but the Charter Schools waited 25 days to request the subpoenas for those. The Charter Schools' Counsel said on March 29th that he intended to subpoena the CSO's files,¹⁷² but he waited an entire week to request the subpoenas for those. Moreover, all of the documents should have been subpoenaed by the January 25th deadline.

Despite repeated requests, the Charter Schools' Counsel was unable to explain why the requested documents would be relevant and material.¹⁷³ These were serious questions because the outcome will be based on the evidence presented at the hearings, not on the analysis that led to the CSO's recommendation to commence the hearings. *See Graystone (Cmwlth.)*, at 142.

Because the Schools' Counsel waited so long to request the subpoenas and was unable to explain why the documents sought would be relevant and material, and because full compliance with the subpoenas could not be accomplished without delaying completion of the hearing, the requests for these subpoenas were denied. Nevertheless, the School District was pressed to comply voluntarily as best it could. As a result, Mr. Krain's documents were produced and the vast majority of the requested CSO documents were either produced or identified as already

¹⁷⁰ See HO[O] 50, 79-81, 86, 93-100; HO[S] 50, 78-80, 85, 92, 94-100.

¹⁷¹ See Tr. vol. 3, at 91:11-93:9.

¹⁷² See Tr. vol. 10, at 16-20.

¹⁷³ See Tr. vol. 12, at 4:12-41:18; Tr. vol. 13, at 5:2-15:15.

available to the Charter Schools in the Epicenter system used for exchanging documents with schools.¹⁷⁴ This was more than reasonable under the circumstances.

g. Timely Completion of the Hearings

At the end of the first hearing day, I encouraged Counsel to present their evidence more efficiently, as follows: “We have a limited amount of time to work with here. So I think it might be in everyone’s benefit if you could sort of pick up the pace a little bit going forward.”¹⁷⁵ Counsel for the Charter Schools reacted to this with outrage, contending that due process rights would be violated if they were not provided with however much time they wanted to take, instead of the time that was reserved with their agreement. I responded that they “would be free to argue that on appeal.”¹⁷⁶ The Charter Schools contend that this remark was evidence that a decision had already been made to recommend nonrenewal. Like the ignored “if” described in Section III.H.6.d above, this ignores the “would be.” This expression is what grammarians call conditional or subjunctive. It describes what could happen if there is an appeal. It does not assume there will be one, as the Charter Schools contend.

The Charter Schools also asserted that another reference to “any potential appeal” was evidence of predisposition.¹⁷⁷ This time, they ignored both “any” and “potential,” in the same way they ignored the “if” and “would be” above. The Charter Schools also criticized this as a “suggestion” to the School District that indicated a bias against them, despite the fact that similar suggestions were also made for their benefit.¹⁷⁸ All such comments were motivated only by a

¹⁷⁴ See Ex. Olney 296; Ex. Stetson 273; Tr. vol. 13, at 7:24-11:13.

¹⁷⁵ See Tr. vol. 1, at 269:2-6.

¹⁷⁶ See Tr. vol. 1, at 268:21-270:4.

¹⁷⁷ See Tr. vol. 10, at 85:6-19.

¹⁷⁸ See, e.g., Tr. vol. 4, at 230:15-231:5.

desire to avoid potential mistakes that might prolong the hearing or make a fair resolution on the merits more difficult.

Lest there be any doubt, I affirm, subject to the penalties of 18 Pa. C.S. § 1746 relating to unsworn falsification to authorities, that I had not reached any conclusions regarding the outcome of these matters when the referenced comments were made, or at any other time during the hearings in these matters. In fact, I did not decide what my recommendation would be until I completed my analysis of the parties' lengthy post-hearing submissions.

None of this established any lack of independence.

h. Reaction to a Comparison of Renewal Outcomes

The Charter Schools next complained that the School District was permitted to explain that they assumed substantial liabilities for the benefit of other ASPIRA managed schools, but that they were somehow precluded from explaining that the charters of Hostos and Pantoja were renewed with conditions despite their assumption of the same liabilities. The Charter Schools then contradicted themselves by citing testimony establishing the very facts that were purportedly precluded.

In an off the cuff remark, I attempted to point out that consistency would not necessarily result in renewal of all the ASPIRA schools' charters, as opposed nonrenewal. I also made the same point later on the record.¹⁷⁹ This was not based on any prejudgment of the outcome, as the Charter Schools contended. It was an attempt to disclose a perceived weakness in their argument. As a trial lawyer, I appreciated receiving such contemporaneous feedback from judges while there was still a chance to try a different approach. However, it is apparent that the Charter Schools' Counsel did not.

¹⁷⁹ See Tr. vol. 16, at 364:19-24.

In any event, questioning the soundness of an argument does not indicate a lack of independence. If it did, no decision by any court could be deemed impartial.

i. Timing of Objections to Exhibits

Objections to admissibility of an exhibit should be made when it is moved into evidence. The Charter Schools' motions showed that this principle was applied evenhandedly, by citing one instance where I told their Counsel that an objection was premature and should be made if and when the exhibits were moved into evidence, and another instance where I told the School District's Counsel the very same thing.¹⁸⁰

Nevertheless, the Charter Schools complained that I only said "thanks for the warning" to the School District's Counsel. But this was in response to an email that said "I am writing to raise an *anticipated* evidentiary issue."¹⁸¹ Thus, the School District's Counsel was alerting me to an issue that would be raised later, unlike the Charter Schools' Counsel, who had requested an immediate ruling. That is why I thanked one for the "warning" and not the other. This did not show any lack of independence, as the Charter Schools contend.

j. Exhibits Regarding Other Charter Schools

Finally, the Charter Schools contended that I ruled in advance on the admissibility of numerous exhibits and later changed my mind. That is not what happened.

On the third day of the hearings, the Charter Schools' Counsel sought to question a witness about the CSO's renewal reports regarding other schools. A lengthy discussion ensued about the relevance of "what happened with some other charter school."¹⁸² The Charter Schools' Counsel then said "I can limit that to one to try -- as an example of what I'm attempting to do

¹⁸⁰ See Ex. HO[O] 118, at 13-14; Ex. HO[S] 124, at 13-14.

¹⁸¹ See Ex. HO[O] 118, at 21 (emphasis added); Ex. HO[S] 124, at 21 (emphasis added).

¹⁸² See Tr. vol. 3, at 186:16-190:4.

here.”¹⁸³ This is why I said “Okay. Look, I’ll give you one . . . ,” not because I arbitrarily imposed such a limit, as the Charter Schools implied.¹⁸⁴ I then said “I would note also that since these are School District documents, I don’t expect that there would be any reason why they couldn’t all be admitted into evidence in any event, or at least be part of the record”¹⁸⁵ This was not a ruling. It was an expectation that they would probably end up being made part of the record. To make certain that the Charter Schools’ Counsel understood this, I explicitly stated again that “I don’t think it’s likely to be relevant”¹⁸⁶

Consistent with the discussion in Section III.H.6.i above, the actual ruling was not made until the exhibits were moved into evidence. That occurred at the end of the last day of the hearing because Counsel for the Charter Schools waited until then to move them into evidence. At that time, the relevance issue was raised again. I admitted some of the exhibits subject to argument on the relevance issue in the parties’ post-hearing submissions. Some of the other exhibits that the Charter Schools’ are complaining about were never even moved into evidence. The rest were not admitted for various reasons, but have still been made part of the record.¹⁸⁷ This was entirely consistent with the expectation I had previously expressed. Moreover, the stated expectation was for “School District documents,” such as renewal reports for other schools, not for all of the other exhibits the Charter Schools are complaining about, such as other schools’ board minutes, an auditor general report and an expert’s comparison report.

None of this established a lack of independence.

¹⁸³ See Tr. vol. 3, at 190:12-14.

¹⁸⁴ See Tr. vol. 3, at 190:15-16.

¹⁸⁵ See Tr. vol. 3, at 190:16-21.

¹⁸⁶ See Tr. vol. 3, at 191:5-6.

¹⁸⁷ See Tr. vol. 16, at 354:14-372:4; Certification of the Record, at Sections F-G.

k. Conclusion

The Code of Judicial Conduct requires disqualification if a judge's impartiality "might reasonably be questioned." Pa. C.J.C.R. 2.11(A). It provides numerous examples, such as personal bias against a party or lawyer, a family relationship, an economic interest in the controversy, involvement as a material witness, or receipt of a substantial campaign contribution from a party, none of which applies here. *See Id.*

Nor do any of the cases that the Charter Schools relied upon support disqualification here. *See Lyness v. State Bd. of Med.*, 605 A.2d 1204, 1210 n.12 (Pa. 1992); *First Phila. Prep. Charter Sch. v. Commonwealth, Dep't of Educ.*, 179 A.3d 128, 137 (Pa. Cmwlt. Ct. 2018); *Shah v. State Bd. of Med.*, 589 A.2d 783, 794 (Pa. Cmwlt. Ct. 1991); *Dayoub v. Commonwealth, State Dental Council & Examining Bd.*, 453 A.2d 751, 753 (Pa. Cmwlt. Ct. 1982).

Lyness involved a disciplinary decision by the State Board of Medicine. The court held that by commingling its prosecutorial and adjudicatory functions, the Board created a potential for bias and an appearance of non-objectivity sufficient to violate the due process clause of the Pennsylvania Constitution. However, the CSL avoids this due process concern by providing for a *de novo* appeal to CAB. *See West Chester Area Sch. Dist. v. Collegium Charter Sch.*, 812 A.2d 1172, 1180-81 (Pa. 2002) ("the minimum requirements of due process demand that a litigant have, at some stage of a proceeding, a neutral fact-finder, and that a charter school has a neutral fact-finder in CAB."); *Graystone (Cmwlt.)*, at 142 ("Thus, any potential bias was cured when CAB reviewed the Board's revocation decision."); 24 P.S. § 17-1729-A(d). Moreover, unlike the State Board of Medicine, the BOE separates the prosecutorial and adjudicatory functions. As explained in Section III.H.6.b above, the OLC engages outside counsel to present the case for nonrenewal, and the BOE decides the outcome based on evidence presented at a hearing

conducted by an independent hearing officer. *Lyness* acknowledged that the due process concerns it addressed can be avoided by constructing such “walls of division” between the prosecutorial and adjudicatory functions. *Id.*, at 1209.

Shah also involved a disciplinary decision by the State Board of Medicine. There, however, the court found “nothing improper” regarding the Board’s decision and rejected the doctor’s argument that the adjudicative and prosecutorial functions were impermissibly commingled. *Id.*, at 792-96. It also found “no demonstration of bias” based on the same types of arguments made here. *Id.*, at 800.

Dayoub also involved alleged commingling of prosecutorial and adjudicatory functions, but by the State Dental Council and Examining Board. This time the Board’s “partiality and hostility” was so extreme that the hearing was deemed unfair. *Id.*, at 753. The court reached this conclusion because “members of the Board heatedly questioned the petitioner and argued with him in such a manner that their behavior was much more in line with that of a prosecuting attorney than of a neutral, detached and impartial decision-maker.” *Id.* No such hostile questioning occurred here. Instead, I treated all witnesses with courtesy and respect, and only asked questions when needed to clarify their testimony.

First Phila. Prep. dealt with guidelines regarding rate calculations. The court granted a preliminary injunction because if it waited for a hearing to be held by PDE, “(1) tangible harm will occur in the interim in that people will lose jobs; (2) the lives of thousands of students will be directly affected; and (3) unless the process is enjoined, it will keep being repeated each year, depriving the Charter Schools of funding upon which they rely.” *Id.*, at 136. None of this is a concern here, because the CSL allows a charter school to continue operating as usual pending a *de novo* review by CAB. *See* 24 P.S. § 17-1729-A(f). Thus, the reasons for holding the statutory

rate calculations process inadequate in *First Phila. Prep.* do not apply to charter school nonrenewal proceedings.

In short, none of the cases the Charter Schools cited apply to this proceeding.

Disqualification “is not to be granted lightly, lest a jurist abdicate his ‘responsibility to decide.’” *League of Women Voters v. Commonwealth*, 179 A.3d 1080, 1083 (Pa. 2018).

After careful consideration, I concluded that my impartiality could not be “reasonably” questioned based on the arguments that the Charter Schools raised. As a result, it was my duty to proceed, especially since recusal would have required the entire hearing process to be repeated.

Accordingly, the Charter Schools’ motions for disqualification were properly denied.

7. Motions to Reopen the Hearing

The Charter Schools also moved to reopen the hearings in these matters based on what they characterized as “newly discovered evidence.”

a. Initial Motions

The evidence in question is a document consisting of a series of photographs of a screen on which a PowerPoint presentation (“Presentation”) was displayed at a meeting on March 29, 2019.¹⁸⁸ Thus, the “new” evidence was disclosed at the meeting 17 days before the hearings in these matters were concluded. The Charter Schools’ Counsel did not identify the person who took the photographs, but the same document was submitted with a public comment by Kathryn M. McKinley, who was described at the hearings as a member of the Charter Schools’ “superintendent’s immediate team.”¹⁸⁹

¹⁸⁸ See Ex. Olney 300; Ex. Stetson 277.

¹⁸⁹ See Ex. PC[O] 8; Tr. vol. 6, at 28:14-16.

On May 30, 2019, which was 62 days after the Presentation was photographed and 45 days after the hearings were concluded, the Charter Schools moved for its admission as a new exhibit. Their motions did not request leave to question any witnesses about the Presentation.

In a conference call the following day, the School District did not object to the Presentation's authenticity, did not request leave to present any other evidence in response, and did not identify any prejudice that would result from the delay in offering the new exhibit. As a result, the new exhibit was admitted, "subject to argument about its relevance, materiality and significance in the parties' post-hearing submissions."¹⁹⁰

Then, 74 days after the Presentation was photographed, 57 days after the hearing was concluded, and after the School District had already submitted its proposed findings of fact, proposed conclusions of law and supporting memoranda, the Charter Schools moved to reopen the hearing and question witnesses about the Presentation. Doing so at that point would have unduly delayed the resolution of this proceeding.

Before issuing a report in administrative proceedings, a presiding officer may "reopen the proceeding for the purpose of taking additional evidence." *See* 1 Pa. Code § 35.231(a). However, a party requesting this relief must "set forth clearly the facts claimed to constitute grounds requiring reopening of the proceeding, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing." *Id.* Moreover, "[t]o serve as a basis to reopen the record, the material changes of fact must not have been discoverable prior to the conclusion of the hearing." *Shoemaker v. State Emps.' Ret. Bd.*, 688 A.2d 751, 753 (Pa. Cmwlth. Ct. 1997). As noted by the only rehearing case the Charter Schools cited, "[a] decision to grant a rehearing or to reopen a record is within the discretion of an administrative agency, and the exercise of that

¹⁹⁰ *See* Ex. HO[O] 109; Ex. HO[S] 115.

discretion by the agency will not be reversed unless a clear abuse is shown.” *Fritz v. Commonwealth, Dep’t of Transp.*, 468 A.2d 538, 539 (Pa. Cmwlth. Ct. 1983).

Here, the Charter Schools could have discovered the Presentation and questioned witnesses about it while the hearings were in progress. Although the Charter Schools’ Counsel represented that he was unaware of the Presentation until after the hearing concluded, he did not represent that the Charter Schools were unaware of it until then. This is not surprising given that it was disclosed at the meeting on March 29, 2019, and circumstantial evidence suggests that an administrator of the Charter Schools might have observed the Presentation and photographed it at that time. In any event, discoverability is what matters, not actual knowledge. *See Shoemaker*, at 753. The Presentation was clearly discoverable weeks before the hearing was concluded. This was sufficient on its own to warrant denial of the Charter Schools’ motion.

In addition, Counsel for the Charter Schools was personally aware of the Presentation on May 30, 2019, when he moved for its admission as an exhibit. He could have requested leave to question witnesses about it then, but he chose not to do so. By the time he moved to reopen the hearing, the evidence was not “new” enough to justify allowing additional testimony at that late stage, particularly when doing so would have delayed the outcome of this proceeding into an additional school year.

For these reasons, the motion for rehearing was correctly denied.

b. Motions for Reconsideration

On June 19, 2019, the Charter Schools moved for reconsideration of the denial of their motions for rehearing. Because additional information was provided, I reconsidered the previous ruling. However, the ruling was reaffirmed for the reasons explained below.

As noted above, the evidence that the Charter Schools relied upon as cause for reopening the hearing is a document consisting of a series of photographs of a screen on which a

PowerPoint presentation was displayed at a meeting on March 29, 2019.¹⁹¹ In my previous decision, I presumed that the meeting was open to the public. In their motions for reconsideration, the Charter Schools contended that it must not have been a public meeting because it wasn't advertised. This was wrong for at least three reasons. First, it assumed that it was a School District action meeting. That was belied by the news article that the Charter Schools included with their motions for reconsideration, in which a photo caption identified the meeting as a "town hall event" at a charter school called "Mastery Shoemaker."¹⁹² Second, the Charter Schools failed to explain how a staff photographer for The Philadelphia Inquirer could have taken that photo if the meeting was not open the public. Third, an open invitation to the meeting was posted on the internet by its sponsor, the Philadelphia Higher Education Network for Neighborhood Development.¹⁹³

The motions for reconsideration also represented that the Charter Schools received the document on May 24, 2019 in response to a Right-to-Know Law request.¹⁹⁴ However, this was contradicted by Ms. McKinley's submission of the document before that date with her public comment.¹⁹⁵ The motions for reconsideration still did not explain how or precisely when Ms. McKinley actually received the document.

At the very latest, the Charter Schools actually had the document "shortly before" May 21, 2019, when Ms. McKinley submitted her comment.¹⁹⁶ Yet, they waited until May 30 to move

¹⁹¹ See Ex. Olney 300; Ex. Stetson 277.

¹⁹² See Ex. HO[O] 122, at 10; Ex. HO[S] 128, at 10.

¹⁹³ See <http://phennd.org/update/is-school-choice-the-black-choice-may-29/>.

¹⁹⁴ See Ex. HO[O] 122, at 42; Ex. HO[S] 128, at 42.

¹⁹⁵ See Ex. PC[O] 8; Ex. PC[S] 58.

¹⁹⁶ See Ex. HO[O] 122, at 32, McKinley Aff. ¶ 11 (incorrectly stating the date); Ex. HO[S] 128, at 32, McKinley Aff. ¶ 11 (incorrectly stating the date).

for its admission as an exhibit, and even then, did not request any additional testimony. Instead, the Charter Schools waited until June 11, after the School District submitted its proposed findings of fact, proposed conclusions of law and supporting memoranda. If this were ongoing civil litigation, a three-week delay might have been tolerable, but it was unjustifiable in this context, after the close of an administrative hearing that the Charter Schools had repeatedly delayed and prolonged until it could not be reopened without postponing the resolution of these matters until the following school year.

In any event, as noted in Section III.H.7.a above, discoverability is what matters, not actual knowledge. *See Shoemaker*, at 753. Here, the Presentation was discoverable weeks before the hearing was concluded.

The Charter Schools' reference to a newspaper article published on June 17, 2019 also did not justify reopening the hearing.¹⁹⁷ Every word of the article was inadmissible hearsay, and its purportedly new "revelations" consisted primarily of: (a) contentions by Omar Barlow that he also made (unsuccessfully) in 2017 during a public nonrenewal hearing against Eastern University Academy Charter School;¹⁹⁸ (b) a remark by Farah Jimenez at a public meeting before her resignation from the SRC in February 2018; (c) quotes from the Presentation itself, which the Charter Schools had long before the article; and (d) concerns expressed by meeting participants about difficulties finding "good lawyers" and "good finance people." This was not sufficient to "restart the clock" for moving to reopen the hearings.

The Charter Schools' delay also was not justified by denial of their last minute requests for additional subpoenas, because the Presentation was not within the scope of those subpoenas.

¹⁹⁷ See Ex. HO[O] 122, at 8-11; Ex. HO[S] 128, at 8-11.

¹⁹⁸ The Charter Schools could not claim that they were unaware of this, because they submitted a transcript from the Eastern hearing as exhibits in these proceeding. *See* Ex. Olney 281; Ex. Stetson 258.

The proposed subpoenas addressed to Mayer Krain sought his files regarding the audits he conducted for the Charter Schools' renewal reports.¹⁹⁹ There was no reason to believe that the presentation would have been in those files, and he produced them anyway.²⁰⁰ The other proposed subpoenas sought the School District's files regarding "these matters," including documents relating to the Charter Schools' annual charter evaluations and renewal reports.²⁰¹ Thus, these proposed subpoenas also sought files specific to the Charter Schools and their evaluations. It would be unreasonable to presume that the Presentation at issue here was included in those files, given that the Presentation dealt only with overall trends and was prepared for a meeting with leaders of other schools three years after the CSO made its recommendations for Olney and Stetson.²⁰²

For these reasons, and for the reasons stated in the previous ruling, the denials of the Charter Schools' motions for rehearing were correctly reaffirmed.

IV. PUBLIC COMMENTS

Public comments were solicited by the BOE from April 22, 2019 through May 21, 2019,²⁰³ in response to which 140 individuals submitted 141 comments regarding Olney,²⁰⁴ as follows:

¹⁹⁹ See Ex. HO[O] 122, at 48; Ex. HO[S] 128, at 49. (These proposed subpoenas bore my signature, but only because it was copied without my consent from other subpoenas that I had actually issued before.)

²⁰⁰ See Ex. Olney 296; Ex. Stetson 273.

²⁰¹ See Ex. HO[O] 122, at 50; Ex. HO[S] 128, at 51 (These proposed subpoenas also bore my signature, but only because it also was copied without my consent from other subpoenas that I had actually issued before.)

²⁰² See Ex. JE[O] 17; Ex. JE[S] 16.

²⁰³ See Ex. HO[O] 104.

²⁰⁴ See Ex. PC[O] 1-143. (Ex. PC[O] 72 was counted as two submissions, because it was co-authored by two teachers.)

Received by the BOE	8
Received by the CSO	<u>136</u>
Subtotal	144
Less Duplicates	<u>-3</u>
Total Submitted	141

Of the 140 individuals who responded (one of whom submitted two comments), 129 were students (who wrote what appear to be assigned papers on why Olney should continue to be managed by ASPIRA), 5 were administrators, teachers or other employees at Olney, 4 were advocates at Alliance for Philadelphia Public Schools (“APPS”), 1 was a parent of an Olney student, and 1 was a member of the surrounding community. All those who responded supported renewal, except the advocates at APPS, who opposed renewal based primarily on the evidence presented at the hearing.

The strong consensus of the administrators, faculty, and students was that Olney provides a welcoming family-like environment, where students are motivated to learn. Their most frequently stated reasons for supporting renewal were that the students like Olney, are supported, feel safe and are learning well, that the climate is positive, that the teachers and administrators are caring and committed, that there are a large number of Hispanic/Latino students and English language learners, that free daycare is provided for students’ children, that Olney supports the community, and that Olney is better now than it was before it became a charter school.

Those who opposed renewal did so based primarily on Olney’s poor academic performance and the financial issues discussed above.

In summary, the comments confirm that Olney does a good job of creating a positive environment, motivating students and supporting them and the community. This is laudable, but it does not excuse Olney’s material failures to comply with its charter, student performance requirements, generally accepted standards of fiscal management and audit requirements, and applicable laws. *See* 24 P.S. § 17-1729-A.

V. RECOMMENDATION

As described above, Olney has failed to comply with material provisions of its charter, failed to meet applicable requirements for student performance, failed to comply with generally accepted standards of fiscal management and audit requirements, and violated applicable laws from which it has not been exempted. *See* 24 P.S. § 17-1729-A. These established violations are sufficient to warrant nonrenewal of Olney's charter, because they are significant, material and fundamental. *See Renaissance Charter*, at 3 n.3.

Nonrenewal of Olney's charter is not likely to undermine the core purpose of the CSL to improve student learning, because Olney's students will probably receive a better education elsewhere or at the same school under different management.

Olney has not met its burden of proving that the School District engaged in selective enforcement against minority-led charter schools or otherwise deprived Olney of equal protection of the laws.

Olney also has not met its burden of proving that it was denied due process in any way.

Accordingly, I recommend that Olney's charter *not* be renewed.

Respectfully Submitted,



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Date: September 19, 2019

**BOARD OF EDUCATION
THE SCHOOL DISTRICT OF PHILADELPHIA**

In the Matter of:

Charter Nonrenewal Proceeding Regarding
Olney Charter High School

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Hearing Officer submits the following findings of fact and conclusions of law regarding this nonrenewal proceeding by the School District of Philadelphia (“School District” or “SDP”) against Olney Charter High School, also known as Olney Charter High School, Inc.: An ASPIRA, Inc. of Pennsylvania School, (“Olney”).

FINDINGS OF FACT

General Background

1. The School District is a home rule school district of the first class organized and existing under the Pennsylvania Public School Code and the Philadelphia Home Rule Charter.
2. Olney is a public charter school serving students in grades 9 through 12.
3. The School District was declared a distressed school district under Section 691(c) of the Distressed School Law, 24 P.S. § 6-691(c), as a result of which it was governed by the School Reform Commission (“SRC”) from December 21, 2001, until June 30, 2018.¹
4. On July 1, 2018, the Board of Education (“BOE”) became the SRC’s successor as the School District’s local board of school directors.

¹ The Distressed School Law was added to the Public School Code in 1959 and special provisions relating to school districts of the first class were added in 1998 and later years. *See* Act of Dec. 15, 1959, P.L. 1842, No. 675 (as amended 24 P.S. §§6-691 - 6-695).

Procedural Posture

5. On December 14, 2017, the SRC approved Resolution SRC No. SRC-8 (“SRC-8”) at a public meeting, which instituted nonrenewal proceedings against Olney. (Ex. JE[O] 1.)

6. SRC-8 listed the following grounds for nonrenewal:

1. During the 2012-2013 school year, the first year of administration of Keystone exams for high school students in Pennsylvania, 30.0% of Olney 11th grade students who took the Algebra I Keystone exam scored proficient or advanced. During the 2013-2014 school year, 25.0% of Olney 11th grade students who took the Algebra I Keystone exam scored proficient or advanced. During the 2014-2015 school year, 21.1% of Olney 11th grade students who took the Algebra I Keystone exam scored proficient or advanced. During the 2015-2016 school year, 24.0% of Olney 11th grade students who took the Algebra I Keystone exam scored proficient or advanced. During the 2016-2017 school year, 16.50% of Olney 11th grade students who took the Algebra I Keystone exam scored proficient or advanced. Thus, from the 2012-2013 school year to the 2016-2017 school year, the percent of 11th grade students at Olney scoring proficient or advanced on the Algebra I Keystone exam based on the banked accountability score method decreased by 13.50 percentage points.

2. During the 2012-2013 school year, the first year of administration of Keystone exams for high school students in Pennsylvania, 38.0% of Olney 11th grade students who took the Literature Keystone exam scored proficient or advanced. During the 2013-2014 school year, 40.0% of Olney 11th grade students who took the Literature Keystone exam scored proficient or advanced. During the 2014-2015 school year, 25.3% of Olney 11th grade students who took the Literature Keystone exam scored proficient or advanced. During the 2015-2016 school year, 33.7% of Olney 11th grade students who took the Literature Keystone exam scored proficient or advanced. During the 2016-2017 school year 20.5% of Olney 11th grade students who took the Literature Keystone exam scored proficient or advanced. Thus, from the 2012-2013 school year to the 2016-2017 school year, the percent of 11th grade students at Olney scoring proficient or advanced on the Literature Keystone exam based on the banked accountability score method decreased by 17.5 percentage points.

3. During the 2012-2013 school year, 5.0% of Olney 11th grade students who took the Biology Keystone exam scored proficient or advanced. During the 2013-2014 school year, 14.0% of Olney 11th grade students who took the Biology Keystone exam scored proficient or advanced. During the 2014-2015 school year, 11.0% of Olney 11th grade students who took the Biology Keystone exam scored proficient or advanced. During the 2015-2016 school year, 15.6% of Olney 11th grade students who took the Biology Keystone exam scored proficient or advanced. During the 2016-2017 school year, 7.4% of Olney 11th grade students who took the Biology Keystone exam scored proficient or advanced. Thus, from

the 2013-2014 school year to the 2016-2017 school year, the percent of 11th grade students at Olney scoring proficient or advanced on the Biology Keystone exam based on the banked accountability score method decreased by 6.6 percentage points.

4. The Algebra I Keystone exam banked 11th grade accountability proficiency rates for Olney did not exceed the banked 11th grade accountability proficiency rate for students in School District schools in the 2012-2013 school year, the 2013-2014 school year, the 2014-2015 school year, the 2015-2016 school year, and the 2016-2017 school year. The banked 11th grade accountability proficiency rates for the School District for the Algebra I Keystone were 42.2% in 2012-2013, 42.6% in 2013-2014, 43.3% in 2014-2015, 48.2% in 2015-2016 and 38.7% in 2016-2017.

5. The Literature Keystone exam banked 11th grade accountability proficiency rates for Olney did not exceed the banked 11th grade accountability proficiency rate for students in School District schools in the 2012-2013 school year, the 2013-2014 school year, the 2014-2015 school year, the 2015-2016 school year, and the 2016-2017 school year. The banked 11th grade accountability proficiency rates for the School District for the Literature Keystone were 56.2% in 2012-2013, 56.1% in 2013-2014, 54.4% in 2014-2015, 60.9% in 2015-2016 and 48.8% in 2016-2017.

6. The Biology Keystone exam banked 11th grade accountability proficiency rates for Olney did not exceed the banked 11th grade accountability proficiency rate for students in School District schools in the 2012-2013 school year, the 2013-2014 school year, the 2014-2015 school year, the 2015-2016 school year, and the 2016-2017 school year. The banked 11th grade accountability proficiency rates for the School District for the Biology Keystone were 21.5% in 2012-2013, 28.3% in 2013-2014, 33.3% in 2014-2015, 40.5% in 2015-2016 and 36.5% in 2016-2017.

7. The Algebra I Keystone exam banked 11th grade accountability proficiency rates for Olney did not exceed the banked 11th grade accountability proficiency rate for students attending brick and mortar charter schools in Philadelphia in the 2012-2013 school year, the 2013-2014 school year, the 2014-2015 school year, the 2015-2016 school year, and the 2016-2017 school year. The 11th grade accountability proficiency rates for Charter School students in Philadelphia for the Algebra I Keystone were 39.4% in 2012-2013, 40.3% in 2013-2014, 41.7% in 2014-2015, 45.6% in 2015-2016 and 39.2% in 2016-2017.

8. The Literature Keystone exam banked 11th grade accountability proficiency rates for Olney did not exceed the banked 11th grade accountability proficiency rate for students attending brick and mortar charter schools in Philadelphia in the 2012-2013 school year, the 2013-2014 school year, the 2014-2015 school year, the 2015-2016 school year, and the 2016-2017 school year. The 11th grade accountability proficiency rates for Charter School students in

Philadelphia for the Literature Keystone were 55.0% in 2012-2013, 55.3% in 2013-2014, 56.4% in 2014-2015, 60.1% in 2015-2016 and 52.8% in 2016-2017.

9. The Biology Keystone exam banked 11th grade accountability proficiency rates for Olney did not exceed the banked 11th grade accountability proficiency rate for students attending brick and mortar charter schools in Philadelphia in the 2012-2013 school year, the 2013-2014 school year, the 2014-2015 school year, the 2015-2016 school year, and the 2016-2017 school year. The 11th grade accountability proficiency rates for Charter School students in Philadelphia for the Biology Keystone were 17.7% in 2012-2013, 25.4% in 2013-2014, 29.8% in 2014-2015, 36.2% in 2015-2016 and 32.7% in 2016-2017.

10. The Algebra I Keystone exam banked 11th grade accountability proficiency rates for Olney did not exceed the banked 11th grade accountability proficiency rate for students attending schools in Olney's 2015-2016 School Progress Report ("SPR") peer group for the 2014-2015 school year, the 2015-2016 school year, and the 2016-2017 school year. 2015-2016 SPR peer group schools student banked 11th grade accountability proficiency rates for the Algebra I Keystone were 36.9% in 2014-2015, 41.7% in 2015-2016 and 33.6% in 2016-2017.

11. The Literature Keystone exam banked 11th grade accountability proficiency rates for Olney did not exceed the banked 11th grade accountability proficiency rate for students attending schools in Olney's 2015-2016 SPR peer group for the 2014-2015 school year, the 2015-2016 school year, and the 2016-2017 school year. 2015-2016 SPR peer group schools student banked 11th grade accountability proficiency rates for the Literature Keystone were 52.7% in 2014-2015, 57.8% in 2015-2016 and 47.0% in 2016-2017.

12. The Biology Keystone exam banked 11th grade accountability proficiency rates for Olney did not exceed the banked 11th grade accountability proficiency rate for student's attending schools in Olney's 2015-2016 SPR peer group for the 2014-2015 school year, the 2015-2016 school year, and the 2016-2017 school year. 2015-2016 SPR peer group schools student banked 11th grade accountability proficiency rates for the Biology Keystone were 21.2% in 2014-2015, 29.0% in 2015-2016 and 26.4% in 2016-2017.

13. Olney's School Performance Profile ("SPP") score was 53.5 in the 2012-2013 school year, the first year an SPP score was generated by the Pennsylvania Department of Education ("PDE"), 49.6 in the 2013-2014 school year, 39.0 in the 2014-2015 school year, 41.4 in the 2015-2016 school year, and 37.9 in the 2016-2017 school year. All of Olney's SPP scores were in the lowest SPP category of 60 or below and all were significantly below a SPP score of 70, the minimum SPP score PDE has identified as meeting academic performance expectations.

14. Olney's SPP scores in the 2012-2013 school year, the 2013-2014 school year, the 2014-2015 school year, the 2015-2016 school year, and the 2016-2017

school year were below the average SPP building level score for all School District-operated schools including CTE programs. The School District school building level average SPP score was 57.5 in 2012-2013, 57.3 in 2013-2014, 52.7 in 2014-2015, 52.7 in 2015-2016, and 52.8 in 2016-2017.

15. Olney's SPP scores in the 2012-2013 school year, the 2013-2014 school year, the 2014-2015 school year, the 2015-2016 school year, and the 2016-2017 school year were below the average SPP building level score for all Philadelphia brick and mortar charter schools. The Philadelphia brick and mortar Charter School building level average SPP score was 66.0 in 2012-2013, 63.6 in 2013-2014, 57.6 in 2014-2015, 56.8 in 2015-2016, and 58.0 in 2016-2017.

16. Olney did not meet the Pennsylvania academic growth standard, the Average Growth Index ("AGI"), on the Algebra I Keystone exam in the 2014-2015 and 2016-2017 school years.

17. Olney did not meet the Pennsylvania academic growth standard, the AGI, on the Literature Keystone exam from the 2012-2013 school year through the 2016-2017 school year.

18. Olney did not meet the Pennsylvania academic growth standard, the AGI, on the Biology Keystone exam from the 2014-2015 school year through 2016-2017 school year.

19. When comparing Olney student academic achievement levels to the State's Annual Measureable Objectives ("AMOs") in Algebra I and Literature for the 2013-2014 school year, the last year in which PDE made AMO information available, Olney did not meet the AMO targets on either the Algebra I Keystone exam or the Literature Keystone exam for any of the nine student subgroups identified (Historically Underperforming, Individualized Education Plan ("IEP"), English Language Learner, Economically Disadvantaged, Male, Female, Asian, Black or African American and Hispanic) except Asian students on the Algebra I Keystone exam and Asian and female students on the Literature Keystone exam.

20. Olney's four-year high school graduation rate dropped 24.3 percentage points during the Charter Term from the 2011-2012 school year to the 2013-2014 school year. Olney's four-year high school graduation rate as reported by PDE was 77.5% in the 2011-2012 school year, 58.2% in the 2012-2013 school year, and 53.2% in the 2013-2014 school year. Olney's graduation rate was lower than the rate for students attending schools in the 2014-2015 SPR peer group in both the 2012-2013 school year and the 2013-2014 school year.

21. Olney's four-year high school graduation rate, calculated from data as reported to the School District by Olney, increased by 4.8 percentage points from the 2014-2015 to the 2016-2017 school year however it was lower than the rate for students attending schools in Olney's 2015-2016 SPR peer group and the School District's graduation rate in the 2014-2015 school year and the 2015-2016

school year. Olney's four-year high school graduation rate, calculated from data as reported to the School District by Olney, was 60.2% in the 2014-2015 school year, 65.4% in the 2015-2016 school year and 65.0% in the 2016-2017 school year. The four-year high school graduation rate for Olney's 2015-2016 SPR peer group was 82.0% in the 2014-2015 school year and 82.7% in the 2015-2016 school year. The four-year high school graduation rate for the School District was 74.3% in the 2014-2015 school year and 75.3% in the 2015-2016 school year.

22. Olney had a federal accountability designation of "Priority" for the 2012-2013 school year, the 2013-2014 school year and the 2014-15 school year meaning that Olney was in the lowest 5% of Title I schools based on combined Algebra I/Literature proficiencies for Keystone Exams.

23. Prior to the 2015-2016 school year, although the Charter School is a Renaissance charter school and is expected to have a mission aligned to the intent of the Renaissance Initiative, Olney changed its mission statement to replace "achievement of academic proficiency and college and career readiness" with "persevere towards excellence".

24. Olney failed to meet commitments made in its original charter application including "dramatic improvements in academic achievement," "all children enter every grade on level" and "the opportunity and achievement gap is closed for all students."

25. Olney failed to meet all program requirements for English Language Learners ("ELL") under Section 4.26 of the State Board of Education regulations in that, during the 2015-2016 school year, Olney did not have sufficient translation and interpretation services to communicate with parents in different languages; Olney did not annually administer the ACCESS assessment as required by PDE guidance; Olney's exit criteria for ELLs did not fully align with PDE guidance; Olney did not provide direct, daily instruction five days per week to ELLs; and Olney did not have an annual professional development plan for English as a Second Language staff as required under the applicable PDE guidance in the 2015-2016 school year.

26. During the charter term and into the 2016-2017 school year, Olney did not have fully compliant and equitable student admission policies in accordance with the Charter School Law and the Public School Code in that:

- a. During the charter term, as identified during the renewal evaluation in the 2015-2016 school year, the Olney student application required an applicant to provide a social security number and information about race/ethnicity, which is not permissible under PDE guidance.
- b. During the charter term, as identified during the renewal evaluation in the 2015-2016 school year, the Olney enrollment packet

required documents to be provided, such as transcripts, special education records, and physical and dental examination records, beyond the five documents that may be required under PDE guidance.

- c. As recently as the 2016-2017 school year, the Olney enrollment packet did not require submission of the five documents required before completing enrollment of a student under PDE guidance: a parent registration statement, proof of residency, proof of age, immunizations and home language survey. Olney addressed this noncompliance after receiving a Notice of Deficiency from the CSO in July 2017.

27. Renaissance performance targets in the Olney Charter related to within year student retention were not met by Olney from the 2011-2012 school year through the 2014-2015 school year. Within year retention at Olney was 83% in the 2011-2012 school year when the target was 85.8%; 79% in the 2012-2013 school year when the target was 89.3%; 85% in the 2013-2014 school year when the target was 91.1%; and 85% in the 2014-2015 school year when the target was 92.8%.

28. Renaissance performance targets in the Olney Charter related to rate of violent incidents were not met by Olney from the 2011-2012 school year through the 2014-2015 school year. The rate of violent incidents was 26.9 per 100 students in the 2011-2012 school year when the target was 9.6; 18.4 per 100 students in the 2012-2013 school year when the target was 5.7; 4.2 per 100 students in the 2013-2014 school year when the target was 3.8; and 14.1 per 100 students in the 2014-2015 school year when the target was 1.8.

29. Olney, in its renewal application, reported seven expulsions in the 2012-2013 school year, three expulsions in the 2013-2014 school year and two expulsions in the 2014-2015 school year. However, Board minutes do not indicate that the Board of Trustees for Olney approved all of the expulsions in accordance with the Public School Code and the Charter School's Bylaws.

30. Actions by an Olney student that could lead to placement in the in-school alternative placement for behavior incidents, called the Success Academy, were not identified in the 2015-2016 school year Family and Student Handbook. Further, it was reported during the site visit in November 2015 that consequences for the same behavior may vary, and staff was unclear on the process for placing students at the Success Academy in 2015-2016.

31. Olney failed to meet a commitment stated in its original charter application related to student attendance. Olney's original charter application stated, "all students are excited to attend school every day". The percent of Olney students attending 95% of more instructional days declined from 20% in the 2013-2014 school year to 15% in the 2016-2017 school year, representing a

negative trend. Olney's percentile rank in the 2013-2014 school year (32nd), the 2014-2015 school year (25th), the 2015-2016 school year (26th) and the 2016-2017 school year (24th) were lower than the percentile rank for the Olney School pre-Renaissance in the 2010-2011 school year (35th).

32. The Board of Trustees of Olney failed to operate in accordance with applicable law and Olney's Bylaws and policies in that:

- a. The Olney Bylaws state that officers should be elected at the Annual Board Meeting in June. The Board of Trustees did not provide Board minutes stating that officers were elected at any Annual Board Meeting during the Charter Term. Although a President and Secretary were elected in June 2017, these elections do not reflect a complete slate of Board officers.
- b. Board minutes for the charter term through the renewal evaluation in the 2015-2016 school year, did not clearly state the opening and closing of Board meetings specifically for Olney, as opposed to the other three ASPIRA-managed brick and mortar charter schools; Board meetings for all ASPIRA-managed charter schools are held concurrently with specific business or approvals by individual charter school not clearly delineated.
- c. The Bylaws provide for an Executive Committee that "shall have the authority of the Board; except that no such committee shall have the authority to (i) fill vacancies on the Board or any committee thereof; (ii) amend the by-laws; (iii) approve a plan or merger; (iv) dismiss members of the Board." This raises concerns regarding a subset of Board members acting on behalf of the entire Board on the operations and functioning of the Charter School.
- d. As public officials under the Pennsylvania Public Official and Employee Ethics Act, members of the Board of Trustees are required to complete Statements of Financial Interest annually by May 1. Olney did not provide complete Statements of Financial Interest forms in at least 10 instances for all Board members from the 2012-2013 through 2016-2017 school years. Additionally for calendar year 2016, the most recent year of submission required, Statements of Financial Interest for Olney Board members were completed, dated and signed after the due date of May 1, 2017.

33. Olney failed to meet the 100% highly qualified teacher ("HQT") requirement as required by the No Child Left Behind Act as reported by PDE. In the 2011-2012 school year, only 85% of the PDE-specified core academic classes taught at Olney were taught by highly qualified teachers. In the 2012-2013 school year, only 78% of the PDE specified core academic classes taught at Olney were taught by highly qualified teachers. In the 2013-2014 school year, only 91% of

the PDE specified core academic classes taught at Olney were taught by highly qualified teachers. In the 2014-2015 school year, only 95% of the PDE specified core academic classes taught at Olney were taught by highly qualified teachers. In the 2015-2016 school year, only 96% of the PDE specified core academic classes taught at Olney were taught by highly qualified teachers.

34. During the 2015-2016 school year, all special education instructors at Olney were not appropriately certified in violation of PDE regulations. During the 2016-2017 school year, only 27 of 34 special education instructors at Olney were appropriately certified, in violation of PDE regulations.

35. Olney's audited financial statements were not issued on or before December 31 as required by the Pennsylvania Public School Code for three of the four reporting years in the Charter Term. The FY2012 audit was issued in April 2013; the FY2013 audit was issued in January 2014; the FY2014 audit was issued in February 2015; and the FY2016 audit was issued on February 2, 2017.

36. Olney failed to make certain required payments to the Public School Employees' Retirement System ("PSERS") during the Charter Term and the amounts of missed payments were subsequently deducted from the School District's basic education subsidy. The School District recovered from Olney the following funds which Olney failed to pay to PSERS: \$34,615 in November 2012 and \$13,302 in June 2015.

37. Olney has failed to meet generally accepted standards of fiscal management and audit requirements related to short-term financial health and long-term financial sustainability in that:

- a. Olney reported inadequate cash balances, significantly below standard, in all but one year during the period FY2012 through FY2017 with less than 30 days of cash on hand in FY2012, FY2013, FY2015, FY2016, and FY2017. In no fiscal year during the period FY2012 thorough FY2017 did Olney meet or exceed the standard of 60 days cash on hand.
- b. Olney had a positive net position as a percent of revenue during the period FY2012 through FY2016 but only met the standard of having at least 16.67% in two of the six fiscal years during the same period. In FY2017, Olney's net position was less than 0%.
- c. Olney reported a total margin that was significantly below standard at -14.27% in FY2016, and Olney reported a total margin that was less than 0 in three of the six fiscal years, in FY2015, FY2016 and FY2017, during the period FY2012 through FY2017.
- d. Olney reported a current ratio that was significantly below standard for FY2016 and FY2017 in that Olney's current ratio was less than 1.0.

- e. Olney reported a fund balance that was significantly below standard for FY2016 and FY2017 in that Olney's fund balance was less than 0%.
- f. Transactions between Olney and related parties (ASPIRA and other ASPIRA-managed charter schools) were not approved by the Olney Board of Trustees or the boards of trustees of the other ASPIRA-managed charter schools, and appropriate supporting documentation for such transactions were not provided to the School District or the CSO. No written contracts were executed between or among ASPIRA, the Olney Board of Trustees or the boards of trustees for the other ASPIRA-managed charter schools for the majority of funds shifted between ASPIRA-affiliated entities other than the service level agreement between ASPIRA and Olney.
- g. Neither the Olney internal controls policy submitted with the renewal application nor the internal controls policy submitted by Olney in September 2017 specifically state which entity is responsible for which financial management duties, clearly outline roles for Olney staff versus ASPIRA staff, or state which individuals have check signing authority for Olney.
- h. Olney was owed significant funds from ASPIRA and other ASPIRA-managed charter schools during the period FY2012 through FY2017 including \$1.63 million in FY2012, \$1.38 million in FY2013, \$984,678 in FY2014, \$2.58 million in FY2015; \$2.37 million in FY2016; and \$433,656 In FY2017. Of the funds owed from related parties, a significant portion was owed by ASPIRA, Olney's CMO. ASPIRA owed Olney \$1.5 million in FY2012, \$994,705 in FY2013, \$984,678 in FY2014, \$2.52 million in FY2015; \$2.37 million in FY2016; and \$433,656 in FY2017.
- i. Olney owed funds to ASPIRA and other ASPIRA-managed charter schools during the period FY2012 through FY2017 including \$90,469 in FY2012, \$116,110 in FY2013, \$324,450 in FY2014; and \$38,159 in FY2017.
- j. A service level agreement between Olney and ASPIRA was not approved and signed for July 2013; ASPIRA staff reported a continuance of the 2012 agreement. The Olney Board Chair signed the July 2011 agreement in November 2011. The Olney Board Chair did not date the July 2012 agreement, but the ASPIRA Board Chair signed in January 2013. According to ASPIRA staff, for the 2015-2016 school year, the Olney Board of Trustees agreed to a 4% fee increase. However, the Olney Board of Trustees only approved a 2015-2016 Budget for Olney, not a service level

agreement, and no approved or signed agreement for the 2015-2016 school year was available as of February 2016 to address the services, and the terms and conditions related to those services, to be provided by ASPIRA to Olney. During the 2016-2017 school year, Olney was invoiced by ASPIRA for administrative services and charter management fees totaling \$7,016,667 or 27% of total revenues for Olney in FY2017. In FY2015, Olney was invoiced \$2,691,922 for administrative services alone. In FY2017, Olney was invoiced \$6,085,085 for administrative services alone.

- k. Form FY2011 to present, Olney's revenue and financial resources have been used for non-Olney purposes, in violation of the Charter School Law and the Pennsylvania Nonprofit Corporation Law. Olney was not financially independent from other ASPIRA-managed charter schools or from ASPIRA-affiliated entities. Olney is obligated under security agreements, guaranties and other financial instruments to secure the debts of other ASPIRA-managed or ASPIRA-affiliated entities. As of June 30, 2017, Olney had entered into security agreements pledging a portion of Olney's assets to secure the debt of certain related parties. The holders of the debt and the outstanding liability balances are as follows:

- o ASPIRA: Olney's revenue has been included in the security interest of a \$800,215 line of credit loan issued to ASPIRA. The loan matured on October 1, 2016 and was extended through October 31, 2017. The balance of the loan as of June 30, 2017 was \$800,215.
- o ASPIRA Community Enterprises, Inc. ("ACE"): Olney is the guarantor of a \$5,005,005 mortgage loan issued to ACE for the acquisition and construction loan associated with the Antonio Pantoja Charter School. The balance on the loan was \$4,447,227 for year ended June 30, 2016 and \$4,354,757 for year ended June 30, 2017. This loan matured October 1, 2016 and was extended to October 31, 2017. This loan is in forbearance.
- o ACE: Olney's revenue has been included in the security interest of a \$1,742,573 mortgage loan issued to ACE. The mortgage loan matures in August 2018. The balance on this loan was \$1,239,345 as of June 30, 2016 and \$1,061,735 as of June 30, 2017.
- o ACE/Dougherty, LLC ("ACE/Dougherty"): Olney's revenue has been included in the security interest of a \$12,750,000 note payable issued to ACE/Dougherty for the

acquisition, construction and renovation for a building for Eugenio Maria de Hostos Charter School. This loan matured October 1, 2016 and was extended to October 31, 2017. This loan is in forbearance. The balance on the loan was \$8,496,247 for year ended June 30, 2016 and \$8,154,432 for year ended June 30, 2017.

- l. In October 2011, a lease agreement was signed between Olney and ACE/Dougherty, LLC, the owner of 6301 North 2nd Street, which is the current location of Eugenio Maria De Hostos Charter School, for Olney to operate an Excel Academy for over-aged, under-credited students at 6301 North 2nd Street rather than at the School District-owned Olney school building. The lease outlined minimum rent of 1.2 multiplied by 12% of the landlord's debt service on the bonds. ASPIRA staff stated that this rent was determined using an enrollment-based pro-rata share of the mortgage expenses. This is a concern as enrollment can vary daily, monthly and yearly. According to the subordination and attornment agreement between ACE/Dougherty, Olney and PNC Bank, if ACE/Dougherty defaults under the loan documents, Olney shall continue making lease payments directly to PNC bank. Prior to moving to the ACE/Dougherty facility, the Excel Academy was housed at Olney during the 2014-2015 school year. As such, space is available at the Olney school building, thus, the Excel Academy program located at a different site causes unnecessary occupancy expenses for Olney. As represented in the FY2017 audited financial statements, Olney continues to occupy the space in the ACE/Dougherty facility at a rental rate of \$240,000 per year based on the lease terms.
- m. Upon request by the School District's Office of Auditing Services, Olney failed to produce fully descriptive insurance claims made and insurance claims paid information.
- n. The School District's Office of Auditing Services reported a 2012-2013 school year attendance finding of \$251,255 and a 2013-2014 school year active office roll (AOR) finding of \$108,111.24;

(Ex. JE[O] 1.)²

7. At the same time, The SRC also adopted Resolution SRC-9, to institute nonrenewal proceedings regarding John B. Stetson Charter School ("Stetson"). (Ex. JE[S] 1.)

² See footnote 4 below for an explanation of the exhibit numbering.

8. Olney and Stetson (collectively, the “Charter Schools”) are both managed by ASPIRA, Inc. (“ASPIRA”).

9. The School District is represented by the same counsel in the Olney and Stetson matters.

10. Both Charter Schools are also represented by the same counsel.

11. On December 5, 2018, the BOE appointed Rudolph Garcia, Esquire to serve as the Hearing Officer for both proceedings.

12. By agreement of counsel, the hearings in the Olney and Stetson matters were interspersed on March 12, 13, 15, 18, 19, 20, 25, 26, 27 and 29, and April 2, 8, 9, 10, 12 and 15, 2019,³ because the witnesses and testimony substantially overlapped.

13. In addition, the parties agreed that relevant portions of the Olney and Stetson records could be incorporated into each other and relied upon in either proceeding. (Tr. vol. 4, at 305:6-308:8; Tr. vol. 5, at 32:23-33:23; Tr. vol. 10, at 4:17-23.)

14. The School District called the following witnesses in its cases against the Charter Schools: Peng Chao (the senior director of the School District’s Charter Schools Office (“CSO”)), Roger Kligerman (the CSO’s director of quality and accountability), Nicholas Spiva (the CSO’s assistant director of accountability), Timothy Hanser (the CSO’s assistant director of finance and operations), and Mayer Krain (an auditor two in the School District’s Office of Auditing Services (“OAS”)).

15. Olney called the following witnesses in its defense: Lillian English-Hentz (an Olney board member and a student’s grandparent), Sheila Rodriguez (a student’s parent), Carmen Camacho (a student’s parent), James Thompson (Olney’s principal), Ellen Green

³ Transcripts of the Olney and Stetson hearings are combined in a common set of volumes cited here as “Tr. vol. [#], at [page(s):line(s)].”

(Olney's vice principal), Thomas Darden (ASPIRA's chief operating and innovations officer), Daniel LaSalle (Olney's ninth grade assistant principal), Yeslli Ann Hernandez (a Spanish teacher at Olney), Xin Yi (ASPIRA's controller), Gary Samms (a partner at the law firm of Obermayer, Rebmann, Maxwell & Hippel, LLP), Alexander Schuh (the founder and executive director of School Frontiers LLC), Natalie Hoffa (a paralegal at the law firm of Latsha, Davis & McKenna), and all of the witnesses previously called by the School District (as on cross-examination).

16. Stetson called the following witnesses in its defense: Gary Samms, Thomas Darden, Thomas E. Mullin (Stetson's principal), Joanne Esquilin (Stetson's community outreach coordinator), Hedyanne Vallines (a student's parent), Yubelkis Soto (a student's parent), Debra Williams (a student's parent), Joely Sanchez (three students' parent), Maria Sanchez Ortiz (three students' grandparent and five former students' parent), Alexander Schuh, Glenda Marrero (Stetson's assistant principal), Jeanette Rodriguez (Stetson's lead administrative assistant), Xin Yi, Natalie Hoffa, and all of the witnesses previously called by the School District (as on cross-examination).

17. The following exhibits⁴ were admitted into evidence: Ex. JE[O] 1-108; Ex. SD[O] 3, 4, 6, 8-19, 22-26, and 29-33; Ex. Olney 19-23, 28, 32-34, 37-39, 41-44, 47, 49-50, 53-55, 57-59, 61-68, 70-71, 73-88, 90-92, 94-97, 100-101, 108-118, 122-125, 153-155, 166, 175-

⁴ Some of these exhibits were admitted in part or only for certain purposes, and other exhibits that the parties exchanged were not offered into evidence or were excluded based on well-founded objections, as specified in the Certification of the Record submitted in each matter. The exhibits were numbered separately in each case, so to avoid confusion: (a) with respect to the exhibits submitted in the Olney matter, joint exhibits are cited here as Ex. JE[O] 1-108, School District exhibits are cited as Ex. SD[O] 1-33 and Olney exhibits are cited as Ex. Olney 1-300; and (b) with respect to exhibits submitted in the Stetson matter, joint exhibits are cited as "Ex. JE[S] 1-92, School District exhibits are cited as Ex. SD[S] 1-28 and Stetson exhibits are cited as Ex. Stetson 1-277. Additional Hearing Officer exhibits are also included to complete the record, which are cited in the same manner as Ex. HO[O] 1-125 and Ex. HO[S] 1-131.

178, 184-187, 190, 205, 207, 209, 214-215, 217-220, 227-230, 233-234, 237-238, 248-253, 255, 258, 269, 281-282, 284-290, 292, 294-296, and 300; Ex. JE[S] 1-92; Ex. SD[S] 5-12, 15, 17-19, and 21-27; and Ex. Stetson 4-5, 15, 22-23, 26, 27, 29, 31, 33-37, 41, 43-44, 46-51, 55, 57-73, 76-88, 91-92, 94, 96-100, 102-107, 111-114, 131, 135, 138, 145, 151-153, 165, 172-175, 186, 197-202, 208-211, 214-215, 218-219, 230-234, 236, 239, 255, 257, 258 259-264, 266, 268-273 and 277.

18. The BOE then solicited public comments from April 22, 2019 through May 21, 2019,⁵ in response to which 141 individuals submitted 143 comments in the Olney matter, and 88 individuals submitted 114 comments in the Stetson matter (approximately half of which were part of an electronic petition).⁶

19. This matter is now ripe for decision.

Material Violations of Charter Standards and Conditions

Background Regarding Renaissance Charter Schools

20. Two types of charter schools are authorized in Philadelphia: (a) traditional charter schools, for which an application is submitted directly to the governing body; and (b) Renaissance charter schools, for which an applicant responds to a request for proposals to be a turnaround team for an existing school that needs substantial improvement. (*See* Tr. vol. 1, at 25:1-17.)

21. Mr. Darden worked for the School District as deputy chief of strategic programs and oversaw CSO from March/April 2010 through July 2012. (Tr. vol. 5, at 268:17-269:3; Tr. vol. 7, at 110:17-111:1, 122:8-10.) Prior to serving in this role, Mr. Darden had no experience

⁵ See Ex. HO[O] 104.

⁶ See Ex. PC[O] 1-143 and Ex. PC[S] 1-58.

related to charter schools. (Tr. vol. 7, at 108:2-6.) Mr. Darden left his employment with the School District due to a disagreement with the SRC related to charter schools. (Tr. vol. 7, at 122:15-22.) Mr. Darden then began working for ASPIRA in October 2012. (*Id.* at 124:23-125:6.)

22. On December 2009, the School District's Office of Charter, Partnership & New Schools issued the Renaissance Schools Advisory Board: Final Report ("Advisory Board Report"). (Ex. Olney 258; Ex. Stetson 239.) Mr. Darden served on this Advisory Board while employed by the School District. According to Mr. Darden, the Advisory Board was tasked with "trying to come up with a framework by which the District would look at turning around its lowest performing schools." (Tr. vol. 5, at 276:3-7.) These lowest performing schools were in Corrective Action status under the No Child Left Behind Act. (Tr. vol. 7, at 111:17-112:2.)

23. As stated in the Advisory Board Report:

Expected Goals of Renaissance Schools

The District expects the following outcomes, at a minimum, from the Renaissance School approach:

1. Improvement in student academic achievement for all students, including English Language Learners and Special Education students, as measured by results on the Pennsylvania System of School Assessment (PSSA).
2. Improvement in rates of student graduation and promotion.
3. Implementation of instructional practices that will transform schools into high achieving learning environments.
4. Attainment of positive school climates, as measured by reductions in serious incidents, student suspensions, and student absenteeism, and improvements in perceptions of safety by students, staff and families.

(Ex. Olney 258, at 4; Ex. Stetson 239, at 4.)

24. By Resolution No. SRC-36, dated January 20, 2010, the SRC adopted the Renaissance Schools Initiative Policy ("Renaissance Schools Policy"), which authorized the

SRC to grant Renaissance charters as part of the School District's Renaissance Schools Initiative.

(Ex. JE[O] 2, at 1; Ex. Olney 73; Ex. Stetson 64; Tr. vol. 1, at 26:10-24, 27:1-6.)

25. According to the Renaissance Schools Policy, the purpose of the Renaissance Schools Initiative is as follows:

The Renaissance Schools initiative is articulated in the School District of Philadelphia's "Imagine 2014" strategic plan and is predicated on the belief that the School District has chronically underperforming schools that are not serving the needs of students and families and have not made adequate yearly progress as defined by state and federal laws, and that those schools need fundamental change to facilitate a transformation of the learning environment. With an urgency to dramatically improve the learning environment in these underperforming schools, the School District is seeking innovative ways to transfer low-performing schools through new school models that include: in-district restructuring (Innovation Schools) and external partnerships (Contract Schools and Charter Schools).

(Ex. Olney 73, at 1; Ex. Stetson 64, at 1.)

26. A "charter school" is defined in the Renaissance Schools Policy as:

[A]n independent Local Education Agency with a charter school board of trustees to oversee all elements of school curriculum and operations. The relationship between charter schools and the School District shall be accordance with the Pennsylvania Charter School Law and with the charter agreement between the School District and the charter school's board of directors. In order to adhere to the mission of the Renaissance Schools initiative and to maintain high levels of accountability, Renaissance charter agreements will include provisions outlining requirements for student enrollment, student achievement, data reporting, grade configuration, facilities, and inclusion of the Renaissance Schools charter school in the School Annual Report and other School District accountability systems. The provisions will include stringent academic requirements for turnaround school success that may exceed performance targets for non-Renaissance Schools charter schools. These provisions will also be used as a basis for a decision to renew, not renew or revoke at Renaissance Schools charter at the end of its term.

(Ex. Olney 73, at 2; Ex. Stetson 64, at 2.)

27. Renaissance charter schools formed under the Renaissance Schools Policy are to be "governed by an independent board of trustees pursuant to the Pennsylvania Charter School Law." (Ex. Olney 73, at 5; Ex. Stetson 64, at 5.)

28. Renaissance charter schools use School District-owned facilities, which are then operated by the turnaround team selected by the School District under a License Agreement entered into with the School District. (Tr. vol. 1, at 27:10-16.)

29. The License Agreement requires the Charter School, as the Licensee, to maintain the premises and perform all maintenance and repairs to the facility, including but not limited to, plumbing, heating, ventilation, and lighting. (Ex. SD[O] 23, at 3.)

30. Turnaround teams are a group of individuals or an organization that seeks to partner with the School District to operate a school with the intention of dramatically improving academic outcomes. (Tr. vol. 1, at 28:5-9.)

31. Two of the four “Guiding Principles” of Imagine2014 were: “increasing achievement and closing the opportunity and achievement gap for all students” and “holding all adults accountable for student outcomes.” (Ex. Olney 252, at 10, 13; Ex. Stetson 233, at 10, 13.)

32. Beginning in 2010, the School District designated certain chronically underperforming School District schools to be Renaissance Schools. (Ex. JE[O] 2, at 2; Tr. vol. 1, at 28:10-13.)

33. As described in more detail below, ASPIRA submitted proposals under the Renaissance Schools Initiative, and was selected to be a turnaround team first for Stetson and then for Olney. (Tr. vol. 1, at 30-32.)

34. On March 30, 2010, the School District issued Request for Proposals No. 260 called the “Renaissance Schools Initiative – Year 1” (“RFP No. 260”), which outlines the Intent of the Renaissance Schools Initiative and states in pertinent part:

A. Renaissance Schools Initiative

The Renaissance Schools Initiative is articulated in the School District’s “Imagine 2014” strategic plan and is predicated on the belief that chronically underperforming schools that are not serving the needs of students and families

require fundamental change to facilitate a transformation of the learning environment. With an urgency to dramatically improve the learning environment in these underperforming schools, the School District is seeking innovative ways to transform low-performing schools through new school models that include: in-district restructuring (Innovation Schools and Promise Academies) and external partnerships (Contract Schools and Charter Schools). For more information on the forms of schools please see Attachment A. Renaissance Schools will be granted greater degrees of autonomy in school management in exchange for accountability for performance

(Ex. Olney 76, at 7; Ex. Stetson 63, at 7.)

35. The “Goal of the Proposal” and the “aim of the Renaissance Schools RFP Process” “is to find the most talented and qualified individuals and organizations to bring whole school change to failing schools in order to produce the greatest increases in student achievement.” (Ex. Olney 76, at 27; Ex. Stetson 63, at 27.)

36. RFP No. 260 contains the following additional pertinent language:

The Respondents ultimately awarded a school for Renaissance conversion will be expected, at a minimum to demonstrate marked improvement in the following areas:

- Student achievement as described in this RFP
- Student attendance
- School climate and safety, as measured by a reduction in serious and “non-serious” offenses
- Parent and student satisfaction, as measured by surveys
- Retention, promotion, and graduation rates

In addition to significant improvement in the aforementioned areas, each Turnaround Team will be expected to meet specific achievement goals for their students. Those goals are explained in detail in Section B6 of this RFP titled “Accountability Agreements”. An Accountability Agreement will be a condition of any Contract, Charter or Performance Agreement entered into as a result of this RFP.

* * *

7. Accountability

The Renaissance Schools Initiative seeks to achieve dramatic improvements in schools by offering increased autonomy in exchange for increased accountability. As a result of the autonomy granted to the Renaissance Schools, the School District expects to see dramatic gains in student achievement. Each form of

school (Innovation, Promise Academy, Contract or Charter) will be held to a Performance Agreement, Contract or Charter Agreement that clearly states performance and growth targets for each school over a five year period. Throughout the five year term, the School District will continually monitor the progress and performance at the schools.

The District will utilize a common accountability framework for all schools as the basis for evaluating the performance of Renaissance Schools. The accountability framework will encompass the following performance measures:

- **School Performance Index (SPI)** indicators that include both student academic performance and related school quality measures
- **Student enrollment and retention** indicators to monitor the extent to which the Renaissance School is effectively serving the neighborhood community
- **School operational indicators** to evaluate school climate and to ensure compliance with regulations related to Special Education and English Language Learners
- **Renaissance School Review** to provide rigorous qualitative measures of school quality based on multi-day school visit, and to ensure compliance with the Renaissance School design

School Performance Index (SPI) Indicators

The School Performance Index (SPI) is a combination of key outcome measures that evaluate how a school is performing relative to all District schools, and relative to similar schools. The SPI was the primary indicator for selecting schools to become Renaissance Schools, and will serve as a primary indicator for evaluating the success of Renaissance Schools, and for making decision about the continuation of Performance Agreements, Contracts and Charters. In addition, failure to meet these performance indicators may be a basis for terminating Performance Agreements and Contracts and for revoking or not renewing a Charter, at the discretion of the School District.

* * *

The District will establish SPI targets in Renaissance School agreements that require schools to reach a performance level in 4 years (Summer 2014) that is equivalent to the median performance of District schools. Renaissance Schools must also meet annual targets that correspond to progressive improvements on SPI indicators, or to success in meeting performance targets from the School District's Annual Report card for schools

If a Renaissance School does not meet its Year 4 SPI target (Summer 2014), or fails to meet its annual SPI target for two consecutive years, the School District, through a vote of the School Reform Commissions, may elect to revoke a performance agreement, charter or contract agreement.

Attachment K shows the minimum target value for each SPI indicator that must be reached in order to achieve a score of “5” on the SPI in 2009. A score of “5” indicates that the school is performing at or above the 2009 median for District schools on the SPI indicators

* * *

School Operational Indicators

The School District will track the following school operational indicators in order to provide qualitative measures of school climate and to ensure compliance with regulations related to Special Education and English Language Learners.

1. Rate of violent incidents at the school. The School District will evaluate the per pupil rate of violent incidents during each school year. The rate of violent incidents at the Renaissance School should not exceed the school’s baseline 2-year baseline average for school years 2008-09 and 2009-10, as defined by the District’s Office of Climate and Safety, nor should the school be determined as a Persistently Dangerous School by the Pennsylvania Department of Education. Incidents exceeding either threshold for two consecutive years will be cause for review and potential intervention, including revocation of the agreement.

* * *

3. English Language Learner Compliance. The School District will establish criteria for evaluating the extent to which Renaissance Schools are providing appropriate services and supports for students designated with Limited English Proficiency (LEP)

* * *

The decision to terminate a performance agreement, contract, or charter agreement is the sole discretion of the SRC (sic) In the case of a Charter Schools, the School District will exercise the right to revoke the Charter if the terms of the Charter Agreement are not satisfactorily upheld, including the specific accountability metrics established for Renaissance Schools. In the event that a Contract is terminated or a Charter revoked, the District will assume responsibility for implementing an alternative school design (including traditional school-District management). The District will consider strategies to minimize disruption during school transition

(Ex. Olney 76, at 5-6, 7, 13-17; Ex. Stetson 63, at 5-6, 7, 13-17.)

37. RFP No. 260 further states:

IF AWARDED A CHARTER, FAILURE TO COMPLY WITH ANY ESSENTIAL COMMITMENT MADE IN THE RENAISSANCE SCHOOLS INITIATIVE CHARTER APPLICATION MAY BE CAUSE FOR REVOCATION OR NONRENEWAL OF THE CHARTER. ONLY COMPLETE

APPLICATIONS WILL BE CONSIDERED FOR REVIEW AND EVALUATION.

(Ex. Olney 76, at 44; Ex. Stetson 63, at 44.)

38. According to Mr. Darden, the accountability indicators that were in the charter agreements created under the Renaissance Schools Initiative had the goal of getting the lowest performing schools to an SPI of five (the median ranking on the SPI Index). The purpose of the Index was to identify a system of great schools in Philadelphia where all schools were ranked, with one index for elementary schools and one index for high schools, including charter schools. (Tr. vol. 5, at 285:18-286:15, 287:15-23.)

39. On March 30, 2010, ASPIRA applied to be the turnaround team for three proposed Renaissance schools: Potter-Thomas Elementary School, Stetson Middle School and Roberto Clemente Middle School. (Ex. JE[S] 2, at 184.)

40. By Resolution No. SRC-26, dated May 12, 2010, the SRC selected ASPIRA to turnaround Stetson Middle School. (Ex. JE[S] 2, at 2.)

41. ASPIRA then filed a charter school application to be awarded a charter for “John B. Stetson Charter School: an ASPIRA, Inc. of Pennsylvania School.” A charter was granted on June 16, 2010. (Ex. JE[S] 2, at 1, 358.)

42. Request for Proposals No. 286, Renaissance Schools Initiative – Year II (“RFP No. 286”), issued on December 21, 2010 includes similar language as the language quoted above from RFP No. 260. (Ex. JE[O] 2, at 39-73.)

43. School Advisory Councils (“SAC” or “SACs”) were convened for both Olney East High School (“Olney East”) and Olney West High School (“Olney West”). The SAC for Olney East selected ASPIRA as its number one choice. The SAC for Olney West selected ASPIRA as its number two choice, with an internal turnaround as the first choice. The School

District's superintendent at the time ultimately agreed to recommend ASPIRA as the turnaround team for both Olney East and Olney West. (Tr. vol. 6, at 265:19-266:6.)

44. By Resolution No. SRC-26, dated March 16, 2011, the SRC selected ASPIRA to turnaround Olney East and Olney West. (Ex. JE[O] 2, at 2.)

45. The SACs for Olney East and Olney West approved their merger into one high school to be known as Olney High School. (Ex. JE[O] 2, at 2.)

46. At the time Olney East and Olney West were selected for turnaround, both schools were in Corrective Action Two status, meaning they had failed to make Adequate Yearly Progress ("AYP") under the No Child Left Behind Act for 6 years or more due to low standardized test scores. (Tr. vol. 9, at 172:7-173:11.)

47. As noted by Dr. Schuh, the turnaround model was to turn around the "low performing school that it was before to a higher performing school." (Tr. vol. 9, at 180:11-23.)

48. ASPIRA submitted a request to the School District to merge Olney East and Olney West, and operate the combined entity as a charter school (Olney). (Ex. JE[O] 2, at 2.)

49. One of the primary reasons that Olney East and Olney West were part of the Renaissance process was because there had been low academic achievement in those schools. (Tr. vol. 1, at 266:10-18.)

50. ASPIRA submitted a Renaissance Schools Charter Application ("Charter Application"), which was attached to and incorporated into Olney's charter. (Ex. JE[O] 2, at 120-285; Tr. vol. 1, at 39:10-18.)

51. The Charter Application described its Mission and Vision as follows:

ASPIRA has dedicated itself to serving students with low academic performance and who are of limited English proficiency by promoting bilingual education, shown through bilingual administration, faculty, staff and curriculum in all of our schools, and by promoting 21st century skills development, shown through our

technology integration in daily instruction and leadership curriculum implemented at all grade levels.

(Ex. JE[O] 2, at 127.)

52. In the Charter Application, ASPIRA touted its academic performance results and bilingual programming in the other three brick and mortar charter schools that it operated in Philadelphia: Eugenio Maria de Hostos Charter School (“Hostos”); Antonia Pantoja Charter School (“Pantoja”); and Stetson. (Ex. JE[O] 2, at 128-129.)

53. Hostos and Pantoja are not Renaissance charter schools. (Tr. vol. 1, at 33:6-10.)

54. According to the Charter Application, 10 to 25% of students in ASPIRA’s schools were of low English proficiency. (Ex. JE[O] 2, at 139.)

55. Under the “School Design and Program Implementation” section of the Charter Application, related to the Renaissance Schools Initiative, ASPIRA represented as follows:

Imagine 2014

ASPIRA of PA will create a Renaissance School that fully support (sic) the District’s visionary strategic plan Imagine 2014. In order to create schools in Philadelphia that lead to dramatic improvements in academic achievement, we develop innovative schools that are based on best practices in education today, offer educational services that are truly worthy of our students, meet the specific and unique needs of our neighborhood, and are staffed with caring, devoted and well-trained professionals, similar to our three successful charter schools and preschool: Pantoja Charter, De Hostos Charter, Stetson Charter, and Pequenos Pasos de ASPIRA. Our schools will share the following goals with the District’s Imagine 2014 strategic plan:

- A quality school of choice is available for parents and students
- All children enter every grade on level
- All students are excited to attend school every day
- The opportunity and achievement gap is closed for all students . . .
- All students who want to go to college are ready to do so
- Students who are at risk of falling behind or dropping out of school are identified early and provided the supports they need to succeed
- Language assistance is provided for all ELL students

(Ex. JE[O] 2, at 131.)

56. According to the Charter Application, Olney would have “[t]argeted academic supports and interventions for students performing below grade level.” (Ex. JE[O] 2, at 132.)

57. In the section addressing how the proposed curriculum will be implemented to serve the needs of all students, including those who are below or above grade level and English Language Learners, the Charter Application further states as follows:

Our high school model will offer a full continuum of services for our special needs population. Our curricula has been proven effective in educating students with special education needs, students with Limited English Proficiency, students who are below grade level, and students who are above grade level. Our overall approach is to regularly assess our students’ skills using a variety of assessments, including but not limited to the Developmental Reading Assessments (DRAs) in Spanish and English, Study Island PSSA-based benchmark assessments, QRI running records, end of unit tests, PSSA tests and other standardized tests to gauge how well our students are mastering the curriculum at their particular grade level

Students with Limited English Proficiency are supported by an experienced bilingual staff, ensuring bridging across any language barriers that may impact their ability to understand, learn, and achieve. Catapult Learning has been contracted to provide further support ELL learners through small group instruction using their proprietary AchieveEnglish program supplemented with PLATO Reading online curriculum. The curriculum chosen allows modifications for small group learning, which provides a more intimate and less threatening learning environment for many students. An indirect benefit shown is the recognition of diversity and the acknowledgement of individual differences leading to improve interpersonal development. Small learning groups also actively involve students in learning, proving them with opportunities for personal feedback. These are attributes for which ASPIRA seeks to make significant progress with at-risk students. This especially makes sense for student (sic) with limited English proficiency.

(Ex. JE[O] 2, at 143.)

58. The Charter Application further states: “Our curriculum goals are consistent with both the federal No Child Left Behind Law and with the goals of Imagine 2014 – that every student will be proficient and performing on grade level in the core subjects of Reading, Mathematics and Science.” (Ex. JE[O] 2, at 144.)

59. Mr. Darden does not recall evaluating the Stetson charter application or reviewing the bylaws that had been submitted with the application while he supervised the CSO. He also stated that he was not aware of how the Stetson board was going to be set up at the time Stetson submitted the application. By the time the Charter Application was submitted for Olney, Mr. Darden was aware of how the Stetson board was set up, but he does not recall any discussions in the CSO when the Charter Application for Olney came in regarding whether the board setup was in compliance with law, and he did not form an opinion, one way or the other, as to whether it was. (Tr. vol. 7, at 116:9-119:4.)

60. The Charter Application for Olney did not contain a management agreement between ASPIRA and Olney or disclose whether or how transactions would occur in the future between those two entities or between the Olney and other charter schools managed by ASPIRA. Nor did the application disclose that the Charter School would have any role in, or take action related to the debt of the management company or the facilities of other charter schools. (Tr. vol. 1, at 83-84.)

61. On August 24, 2011, the SRC adopted Resolution SRC-48, which authorized the grant of the charter to Olney. (Ex. JE[O] 2, at 2, 286-290.)

Olney's Charter

62. On July 1, 2011, Olney commenced operations under a five-year charter issued by the SRC ("Olney's Charter"). (Ex. JE[O] 2.)

63. The Term stated in Olney's Charter is July 1, 2011 through June 30, 2016. (Ex. JE[O] 2, at 7.)

64. Olney's Charter contains the following pertinent provisions:

**ARTICLE I. LEGAL REQUIREMENTS,
REPRESENTATIONS AND WARRANTIES; GRANT**

* * *

B. **Grant of the Charter.** Subject to all of the terms and conditions in this Charter, the School District grants to the Charter Board this Charter to operate the Charter School as a public school under and pursuant to the Renaissance Schools Policy, the Charter School Law and all other Applicable Laws (as hereinafter defined).

* * *

F. **Renaissance Charter Application of the Charter School.** The Renaissance Charter Application and any amendments, including the representations, certifications and assurances set forth therein (collectively, the “Application”), is hereby incorporated in this Charter as if set forth herein in full. The Charter Board represents and warrants that the information provided to the School district in the Application was true, correct and complete when submitted to the School District and remains true, correct and complete as of the Effective Date The Application may not be modified after the Effective Date except by an amendment to this Charter duly authorized, executed and delivered by the Parties. The Parties acknowledge and agree that the Application sets for the overall goals, standards and general operational policies of the Charter Board relating to the Charter School, and that the Application is not a complete statement of each detail of the Charter Board’s operation of the Charter School The Charter Board shall operate the Charter School in conformity with the mission statement set forth in the Application.

* * *

ARTICLE II. APPLICABLE LAWS

A. Compliance with Applicable Laws.

1. The Charter School shall comply with the Resolution, the Renaissance Schools Policy, common law, court decisions, court orders, the Charter School Law, the Individuals with Disabilities Education Act, 20 U.S.C.S. § 1400 *et seq.*, as amended (“IDEA”), the No Child Left Behind Act, P.L. 107-110 (“NCLB”), and all other applicable state, federal and local laws, statutes, codes, ordinances, regulations and guidance as in effect from time to time (the “Applicable Laws”).

* * *

ARTICLE IV. OPERATIONS AND MANAGEMENT

A. **Operation of Charter School.** Subject to 24 P.S. § 17-1714-A, the terms of this Charter and Applicable Laws, the Charter Board shall be responsible for the operation of the Charter School and shall decide all matters relating to the Charter School, including but not limited to the following: budgeting, curriculum development, testing, operating procedures, hiring and firing of Charter School staff, contracting with necessary professional and nonprofessional employees and all other powers provided by Applicable Laws.

* * *

ARTICLE V. CURRICULUM

A. Education and Curriculum Plan.

1. The Charter School shall implement a complete educational program and curriculum (“Educational Plan”) which is described generally in the Application.

* * *

C. English Education of English Language Learners. The Charter School shall provide appropriate services, in accordance with Applicable Laws, for students who are English Language Learners (“ELL’s”).

* * *

ARTICLE VI. STUDENT ENROLLMENT

B. Student Admissions.

* * *

2. Pursuant to the Renaissance Schools Policy, RFP 286 and the Application, the Charter School shall enroll all students who in the immediately prior school year attended feeder schools for the Olney High School, as may be revised by the School District during the Term of the Charter (“Attendance Feeder Pattern Zone”) and as delineated on the map attached hereto as Exhibit G and made a part hereof. The Charter School may not enroll any students who live outside the Attendance Feeder Pattern Zone, except as provided in Section VI.B.3. and Section VI.B.4.

3. Provided that there is capacity at the Charter School, the Charter School shall enroll students who, through the School District’s High School Voluntary Transfer Program, request a voluntary transfer to the Charter School in accordance with the procedures of the High School Voluntary Transfer Program
....

ARTICLE VII. PERSONNEL

* * *

B. Licensure and Qualifications of Staff.

1. The Charter School shall ensure that all staff utilized in providing educational services at the Charter School have all necessary licenses, certifications and credentials required by this Charter and Applicable Laws, including without limitation the seventy-five (75%) certification requirement under the Charter School Law and the one hundred percent (100%) highly-qualified teacher (“HQT”) requirement under the NCLB.
2. Personnel of the Charter School who provide special education or related services to children with disabilities shall have appropriate certification as required by Applicable Laws.

* * *

ARTICLE IX. TESTING, REPORTS AND ASSESSMENTS

A. **Standardized Tests.** The Charter School shall administer all required federal, state and local standardized tests in compliance with all Applicable Laws. The Charter School shall provide classroom instruction which shall include, but not be limited to, instruction on the essential knowledge and skills necessary to achieve course completion or course credit, including end of course examinations (if required by the School District), and scores on the PSSA, and PASA (Pennsylvania Alternative State Assessment) where applicable, and all other tests and exams required by Applicable Laws.

B. **Student Academic Assessments.** The Charter School agrees to participate in the School District's annual city-wide academic accountability systems by: (1) adopting and administering the most current of the PSSA assessments; (2) participating in accountability systems applicable to all School District schools, including a maximum of one School District predictive assessment test; and (3) participating in the School District's annual reporting systems including the school report card and School Performance Index. Accountability measures for the Charter School are set forth in RFP 286 and in the Application. The Charter School has agreed to certain specific performance targets during the Term of the Charter. Such specific performance targets are attached to and made a part of the Applications (sic) and which are set forth in Exhibit H attached hereto and made a part hereof. During the Term of the Charter, the specific performance targets will be based on the School Performance Index methodology in use at the commencement of the Charter.

* * *

ARTICLE X. ACCOUNTABILITY

* * *

C. The Charter School acknowledges and agrees that failure to meet, in all material respects, the accountability criteria specified in this Charter, in whole or in part, constitutes grounds for nonrenewal or revocation of this Charter:

1. Governance and Management.

* * *

c. The Charter Board agrees to maintain a record of its meetings and decisions consistent with the Sunshine Act and the Pennsylvania Nonprofit Law.

* * *

2. Operations.

* * *

b. The Charter School shall maintain during the Term of the Charter (i) the teacher certification level at 75% for each year, including special education and administrative certificates, as required by the Charter School Law; and (ii) the one hundred percent (100%) HQT requirement under NCLB.

* * *

3. Program.

- a. The Charter School agrees to use its best efforts to achieve AYP and the Pennsylvania Value-Added Assessment Systems (“PVAAS”) growth measure consistent with the Pennsylvania Department of Education’s Accountability System pursuant (sic) NCLB for each year during the five (5)-year Term of this Charter.
- b. The Charter School agrees to fully implement and properly document academic programming and services for special education students and for ELL students, as required by the Pennsylvania Department of Education.
- c. The Charter School agrees to meet the specific performance standards set forth in the Application and attached hereto as Exhibit H.
- d. The Charter School agrees to participate in the School District’s annual performance indicator systems, including without limitation, the School Report Card and the School Performance Index, and to provide required information to produce results for the systems. The Charter School understands that any such performance indicator system may be used as one factor to assess the Charter School’s academic performance during the Term.

* * *

ARTICLE XI. BOOKS, AUDITS AND ACCESS

* * *

- B. **Audit.** The Charter School shall conduct an annual audit in accordance with the requirements of Article 24 of the Public School Code.

* * *

ARTICLE XVIII. MISCELLANEOUS

* * *

- F. **Public Official and Employee Ethics Act.** The Charter School acknowledges that all Charter School trustees and administrators must comply with the Public Official and Employee Ethics Act and that all Charter School trustees and administrators shall submit their completed Statements of Financial Interests forms by May 1st to the Charter School, with copies to the School District.

* * *

- I. **Appendices and Exhibits.** The parties agree to the terms and conditions of this Charter and the Exhibits that are attached hereto and incorporated herein by reference.

(Ex. JE[O] 2 at 1-28.)

65. Olney's Charter is signed by its Board Chair and Board Secretary. (Ex. JE[O] 2 at 31.)

66. Attached to Olney's Charter are "Specific Performance Targets" related to the Renaissance School Accountability Indicators. The targets include, among other things, a minimum rank of five on the SPI by the 2014-2015 school year, and a rate of violent incidents per 100 students, identified as 9.6 as the baseline year, 5.7 for the 2012-13 school year, 3.8 for the 2013-14 school year, and 1.8 by the 2014-15 school year. (Ex. JE[O] 2, at 308-309.)

67. Under Mr. Darden's supervision, the CSO conducted qualitative reviews of the Charter Schools' performance during the first few years of their charters, which were provided to the Charter Schools. (Tr. vol. 7, at 119-120.)

68. The School District issued several reports regarding the Renaissance program in the initial years after the program began, and also cooperated with third parties like Research for Action. (Tr. vol. 5, at 162:9-17; Ex. Olney 64-66, 90-91; Ex. Stetson 49-51, 80-81.) Mr. Darden was the head of the CSO when the chaos noted in the February 2012 report was occurring. (Tr. vol. 15, at 207:1-12.)

CSO Review of Charter Schools' Operations

69. Mr. Chao has been the CSO's senior director since July 2018, and was previously employed by the CSO since June of 2013, first as a program coordinator and then as a program manager and director. (Tr. vol. 1, at 23: 18-23; 24:1-4.)

70. Mr. Chao was the CSO's point person for Renaissance charter schools from June 2013 through 2016. (Tr. vol. 1, at 24:7-12.)

71. During the 2014-15 school year, the CSO conducted a comprehensive review of Stetson's performance and operations during the term. The recommendation from the CSO at

that time was a one-year renewal with conditions. However, a one year charter was not entered into by the parties. (Ex. Stetson 22; Tr. vol. 5, at 10:1-21.) The following year, the CSO evaluated Stetson's continued performance and operations, and recommended nonrenewal of Stetson's charter. (Ex. JE[S] 16.)

72. At the end of the term of Olney's Charter, the CSO conducted a comprehensive review of Olney's performance and operations during the term, and recommended a nonrenewal. (Tr. vol. 1, at 44:16-22; Ex. JE[O] 17.)

73. The CSO's reviews for the Charter Schools included three primary domains: academic success, to see how the school had done in improving academic outcomes for students under the Renaissance program; organizational compliance and viability; and financial health and fiscal management. (Tr. vol. 1, at 45:6-18; Ex. JE[O] 17.)

74. Olney submitted a renewal application ("Renewal Application") as part of the review process. The Renewal Application contains representations regarding a variety of basic data points, and also includes a narrative. Olney's Renewal Application states in pertinent part as follows:

Mission Statement (Original)

Olney Charter High School, an ASPIRA school, is dedicated to creating, nurturing, and providing quality instruction and a supportive environment conducive to learning, while empowering students to become global thinkers and conscious leaders who will achieve proficiency, college and career readiness.

Mission Statement (New)

Olney Charter High School, an ASPIRA school, is committed to establishing and preserving an empowering, uniformed, and supportive educational setting where rigorous teaching and learning is the foundation of high expectations for all. We inspire our students to become global thinkers and conscious leaders who actively and proudly persevere towards excellence.

(Ex. JE[O] 34, at 27-28.)

75. On March 4, 2016, a draft of the CSO's renewal report was provided to Olney so it could submit any factual or technical corrections before the CSO's recommendation was finalized. No such corrections were submitted within the time period provided. (Ex. JE[O] 43.)

76. Upon completion of the renewal review process, the CSO recommended nonrenewal of Olney's Charter on April 11, 2016. (Ex. JE[O] 17, at 6.)

77. After the nonrenewal recommendation was made, the CSO continued to evaluate Olney's performance and operations, including through the issuance of Annual Charter Evaluation ("ACE Reports"). (Tr. vol. 1, at 50-51.)

78. The CSO did not change its recommendation between the time it was made in April 2016 and the SRC's approval of the charges in December 2017. (Tr. vol. 1, at 48:16-21.)

79. It is now up to the BOE to decide whether or not to renew Olney's Charter. (Tr. vol. 1, at 47-48.)

80. The CSO maintains underlying data and information on which the various domains are evaluated as part of the comprehensive review so that individuals new to the CSO can review that information for themselves. (Tr. vol. 1, at 85:7-19.)

81. Neither Olney's Charter nor the Request for Proposals issued for the Renaissance Initiative required the School District to send any sort of notice of deficiency to Olney as a prerequisite to nonrenewal or revocation of its charter.

82. The only "notice" provision that exists in Olney's Charter relates to "Debarment, Suspension and Ineligibility" by a federal or Commonwealth agency, as more fully described in Article XVII of the Charter. (Ex. JE[O] 2, at 26; Ex. JE[S] 2, at 32.) None of those provisions apply to a nonrenewal proceeding under the Charter School Law.

83. The Charter Schools spent a significant portion of the hearing attacking the methodology and the conclusions reached by the CSO's renewal recommendation reports, through cross-examination of School District witnesses about components of the reports, how the components changed over time, and how the ratings were assigned. (*See, e.g.*, Tr. vol. 2, at 240-248 (Spiva); Tr. vol. 5, at 35-90, 123-171, 245-254 (Chao); Tr. vol. 7, at 281-286 (Hanser); Tr. vol. 8, at 4-7 (Spiva); Tr. vol. 8, at 201-202 (Kligerman); Tr. vol. 10, at 128-133 (Spiva); Tr. vol. 16, at 84:15-92:24 (Hanser).)

84. However, the BOE will decide these matters based upon the evidence presented at the hearings, not based on the CSO's analysis and methodology.

Statements of Financial Interest

85. Olney's charter provides as follows: (Ex. JE[O] 2, at 27-28 § XVIII.F.)

Public Official and Employee Ethics Act. The Charter School acknowledges that all Charter School trustees and administrators must comply with the Public Official and Employee Ethics Act and that all Charter School trustees and administrators shall submit their completed Statement of Financial Interests forms by May 1st to the Charter School, with copies to the School District.

86. Thus, Olney was obligated to ensure that its board members filed their SOFIs on time, and was obligated to provide copies to the School District when they did.

87. Here, 12 of Olney's Trustees failed to file at least one SOFI, and several failed to file SOFIs for multiple years. (Findings of Fact, at A-105 ¶ 390.)

Highly Qualified Teachers

88. Olney's charter required it to comply with the Highly Qualified Teacher requirements which were in place through the 2015-16 school year under the No Child Left Behind Act. (*See* Findings of Fact, at A-105 ¶ 390.)

89. All teachers teaching core academic subjects were required to be highly qualified by the end of the 2005-06 school year.

90. Olney failed to have 100% of its core subject area teachers highly qualified in the 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16 school years, in violation of its charter. (Ex. JE[O] 11-14, at the last page of each document; Ex. JE[O] 34, at 2; Ex. Olney 88; Tr. vol. 1, at 196-197.)

Certification Requirements

91. Olney's charter requires all special education staff to be appropriately certified. (Ex. JE[O] 2, at 16 § VII. B.2.)

92. Nevertheless, the vast majority of Olney's special education teachers were not appropriately certified in 2013-2104, 2014-15, 2015-16, 2016-17 and 2017-18. (Ex. JE[O] 56-58, at 4; Ex. SD[O] 14, at 4; Ex. Olney 166, at 4; Tr. vol. 2, at 125-126, 131.)

Olney's Bylaws

93. The Charter Application included bylaws for Olney, which state as follows:

3.1 **Powers.** The Board of Trustees shall be the Board of Trustees as contemplated by the Charter School Law and the Board of Trustees under the Pennsylvania Non Profit Corporation Act. The Board shall have the authority to decide all matters regarding the operation and functioning of the corporation, including but not limited to the authority to:

* * *

d. Adopt the School calendar;

* * *

g. Appoint or dismiss school administrators or staff members;

h. Adopt the annual budget and conduct an annual independent audit of the School's finances;

* * *

k. Create or increase indebtedness;

* * *

m. Enter into contracts of any kind where the amount of the contract exceeds five hundred dollars (\$500);

* * *

o. Determine compensation and terms and conditions of employment of administrators, teachers and other employees of the School.

3.2. **Composition.** The Board of Trustees will consist of nine (9) to fifteen (15) members and the Chief Administrative Officer (ex officio, non-voting and acting as recording secretary). A majority of board Trustees at all times shall be appointees of ASPIRA Inc*. [sic] The membership of the board shall include two parents, one of whom shall be the President of the Parents Association. Selection of the Trustees will be made at an annual meeting in June every year.

3.3 **Term.** All members of the Board of Trustees will serve two-year or three year terms. The Board of Trustees will elect officers from within its membership.

* * *

4.2 **Election and Term of Office.** The officers of the corporation shall be elected by the Board at the Annual Meeting in June. The term of such officers shall be for a period of one (1) year or until such time as their respective successors are duly elected and qualified. Officers may be re-elected without limitation.

(Ex. JE[O] 2, at 237-243.)

94. Mr. Darden testified that, when he was heading the CSO, the School District was not aware of the manner in which board members were appointed to Olney's Board. (Tr. vol. 6, at 278:15-22.)

95. Although it is not clear from reading the Charter Board minutes, Olney's Bylaws were apparently amended, because the Bylaws submitted as of July 31, 2015 are different than the ones submitted with the Application. The Bylaws in place on July 31, 2015 and July 31, 2016, call for the Board to be composed of 5-9 members, including the president of the Parents Association as an ex officio voting member. The July 31, 2015 Bylaws continue to state that the "Board of Directors of ASPIRA Inc. of Pennsylvania shall appoint a majority of the Board of Trustees to a maximum of five such appointees. Selection of the Trustees whose terms have expired will be made at an annual meeting in June every year." (Ex. JE[O] 51, at 2-3.) All Board

members are to serve three-year terms. All vacancies must be filled in a manner that maintains the required composition of the Trustees. (Id. at 3.)

96. On June 9, 2017, the Charter Board took action to further amend the Bylaws. As a result of the action taken, the provision related to ASPIRA appointing trustees was removed from Paragraph 3.2; a provision was added to suggest that directors of another ASPIRA school shall not be interested directors solely on that basis under the Nonprofit Corporation Law; changes were made to the election and term of office of officers so that they could continue in office until another individual was elected; and the following provision was added:

7.6 Debts. The School shall be prohibited from (i) co-mingling any funds of the School with the funds of ASPIRA of Pennsylvania, Inc. or the funds of any other charter school; (ii) guaranteeing any debts of, or pledging any of the School's revenue to secure any debts of, ASPIRA of Pennsylvania, Inc. or of any other charter school; and (iii) having any direct liability for the debts of ASPIRA of Pennsylvania, Inc. or of any other charter school. No member of the Board or officer of the School shall cause the School to enter into any transaction in violation of this Section 7.6. Nothing in this Section 7.6 shall prohibit the School from paying or guaranteeing the debts of the School or for paying for services rendered to or on behalf of the School.

(Ex. JE[O] 53.)

School Advisory Council

97. SACs are mentioned in the Renaissance documents and the Charter. The initial forming of an SAC for each school was facilitated by the School District. (Tr. vol. 5, at 259:3-7.)

98. The School District trained the SACs and hired third-parties to be the liaison and work directly with the SACs “to identify Renaissance schools that would be turned around to walk them through each step of the matching process” as part of the initial phase of the Renaissance Initiative. (Tr. vol. 5, at 283:10-19.)

99. Olney's Charter permits the SAC to recommend nonrenewal or revocation if it is not satisfied with Olney's performance or wants Olney to return to School District management. (Ex. JE[O] 2, at 9; Ex. JE[S] 2, at 16.)

100. However, the School District does not need such a recommendation by the SAC in order to commence nonrenewal proceedings. To the contrary, Olney's Charter states as follows: "The School District reserves the right to not renew this Charter at the end of the Term or to revoke this Charter at any time during the Term in accordance with 24 P.S. § 17-1729-A and Applicable Laws." (Ex. JE[O] 2, at 24; Ex. JE[S] 2, at 30.)

101. Mr. Darden testified that to the best of his knowledge, Olney's SAC had not been operational since early 2013 or late 2012. (Tr. vol. 6, at 268:18-24.) Thus, Olney's SAC was not active when Olney was considered for renewal. (Tr. vol. 5, at 232:14-19.)

102. The SACs are not composed of School District employees, but of parents from the schools. The CSO cannot force a group of parents to maintain a SAC or remain active members of the SAC. (Tr. vol. 5, at 192:3-5, 259:10-13.)

103. Olney did not present any evidence that it was harmed or placed at a disadvantage as a result of the SAC not being active when it was considered for renewal or at any time thereafter. Nor did Olney present any evidence that it or ASPIRA: (a) complained to the School District about the lack of a SAC; (b) asked the School District to take any steps to reconstitute the SAC; or (c) took any steps themselves to reconstitute or maintain the SAC.

104. Olney has a Parent Teacher organization ("PTA"). The President of the PTA is supposed to be a member of Olney's Board of Trustees ("Charter Board"). (Ex. JE[O] 51, at 3 52 at 2, 53 at 2 54 at 2; Ex. JE[S] 37, at 3.)

Failure to Meet Student Performance Requirements

105. Mr. Kligerman testified at the hearing about Olney's academic performance.

106. Mr. Kligerman has worked for the School District since July 2015. Prior to joining the CSO in approximately July 2016, he worked for the School District's Performance Office, supporting the CSO's work related to accountability, including production of the School Progress Report ("SPR"). He then joined the CSO, initially as a program manager for data and then as the senior project manager for data. Prior to working for the School District, Mr. Kligerman worked for Scholar Academies, a charter management organization. (Tr. vol. 1, at 94-994.)

Assessment Measures

107. Since the 2012-13 school year, the following state assessments have been used in Pennsylvania: the Pennsylvania System of School Assessments ("PSSA"), the Pennsylvania Alternative System of Assessments ("PASA"), the Keystone Exams and the ACCESS for ELL exam. (Tr. vol. 1, at 111.)

108. Several performance indicator systems have been in place at the School District and at the State level during the term of Olney's Charter: (a) at the state level, the School Performance Profile ("SPP"); and (b) at the local level, the School Performance Index ("SPI"), which was used by the School District until sometime prior to the 2012-13 school year, and then the SPR, which was used for charter schools beginning in the 2013-14 school year. (Tr. vol. 1, at 102-105.)

109. Beginning in the 2017-18 school year, the Pennsylvania Department of Education ("PDE") published a new tool called the Future Ready Index ("FRI"), but continued to publish SPP scores for all public schools. (Tr. vol. 1, at 114.)

Olney's School Performance Profile Scores

110. The SPP issued by PDE provides a multitude of information about individual schools. The SPP presents “fast facts” about the school, which include the address, the grades served, the school’s status as a Title I school, the average years of teacher experience in both the profession and at the specific school, the percent of classes taught by highly qualified teachers, the enrollment, the gifted population, the dropout rate, as well as demographic details. (Ex. JE[O] 15, 22; Tr. vol. 1, at 115.)

111. The SPP provides each school with a building level academic score, which is on a scale of 0-100 (or slightly more than 100), and PDE has developed a tier-based ranking system. The highest tier is over 100, the next tier is 90 to 100, then 80 to 89.9, 70 to 79.9, 60 to 69.9 and below 60. (Ex. JE[O] 15, 22.)

112. A score of less than 60 is in the lowest performing category on the SPP. (Ex. JE[O] 15.)

113. The SPP score is calculated using multiple metrics, including student achievement or proficiency as measured by state assessment data; the amount of growth groups shown from one year to the next as measured by the Pennsylvania Value Added Assessment System (“PVAAS”); attendance; graduation rates; SAT/ACT data; and other academic indicators. (Ex. JE[O] 15, 22.)

114. Olney educates students in grades 9-12, so its students were assessed by their performance on the Keystone Exams in Algebra I, Literature and Biology. (Tr. vol. 1, at 124-125.)

115. Since the 2012-13 school year, Olney’s SPP scores have been as follows: 53.5 in 2012-13, 49.6 in 2013-14, 39.0 in 2014-15, 41.1 in 2015-16, 37.9 in 2016-17, and 34.9 in 2017-18. (Ex. JE[O] 15; Ex. SD[O] 19 (Table 7); Tr. vol. 1, at 116.)

116. In every year since 2012-13, Olney's SPP score fell below the School District's average and the charter schools' average SPP scores:

Pennsylvania SPP (Average)			
Year	District	Charter	Olney
2012-13	57.5	66.0	53.5
2013-14	57.3	63.6	49.6
2014-15	52.6	57.6	39.0
2015-16	52.5	56.7	41.4
2016-17	53.0	57.1	37.9
2017-18			34.9

(Ex. SD[O] 19, Table 7; Ex. JE[O] 15-16, 37; Tr. vol. 1, at 154-155.)

117. Percentile rank indicates how a school is doing compared to other schools within a group. A percentile rank of 50 is the median. A 99 would mean that the school ranked better than 99 percent of the schools. A 0 would mean that the school was at the very bottom. (Tr. vol. 1, at 156-157.)

118. Olney's SPP score never reached the 50th percentile of all School District and charter schools that received an SPP score:

Pennsylvania SPP (Percentile)		
Year	Score	Percentile
2012-13	53.5	35
2013-14	49.6	23
2014-15	39.0	24
2015-16	41.4	18
2016-17	37.9	7

(Ex. SD[O] 19, Table 8; Tr. vol. 1, at 157-158.)

119. Roughly 93% of all School District and charter schools in Philadelphia had a better SPP score than Olney in 2016-17, the last year for which a percentile is available. (*Id.*)

Olney's Proficiency Rates

120. Keystone Exams are end-of-course exams. The school decides when students will take the course that triggers the Keystone Exam. (Tr. vol. 1, at 262.)

121. Keystone Exam data is reported by the State when a student is in eleventh grade. A student may take the applicable Keystone Exam (Algebra I, Literature and Biology) prior to the student's eleventh grade year. The student's scores are then banked until they are reported for the school that the student is attending in eleventh grade, assuming the student is enrolled from October 1 through the end of the school year. (Tr. vol. 1, at 132-133, 264.)

122. Students may take the Keystone Exam multiple times prior to and during the eleventh grade. The highest score achieved by the student is credited to the school. At Olney, students were taking Algebra I at the end of their 9th grade year and then, if they did not score proficient or better, students could take it during their tenth and eleventh grade year. (Tr. vol. 1, at 265-266; Tr. vol. 4, at 190, 192; Tr. vol. 6, at 210:7-12.) According to Dr. Schuh, Keystone Exams can be taken at three times per year: December, May and August, and can be passed in halves so that the student only needs to re-take the half in which he/she did not score proficient. (Tr. vol. 9, at 124:2-24.)

123. For the first year of Olney's Charter, students in eleventh grade took the PSSA Exam. The Keystone Exams were first utilized in the 2012-13 school year. (Ex. SD[O] 19, Table 1.)

124. Olney's data for 2010-11 reflects the aggregate performance of students at Olney East and Olney West on the eleventh grade PSSA exam, prior to the schools being merged and managed by ASPRIA. (Tr. vol. 1, at 132.)

125. Although the BOE is not bound by this, the CSO's renewal reports expected a proficiency increase of at least 4 percentage points from the pre-Renaissance performance. (Ex. JE[O] 17, at 8.)

126. Since the 2012-13 school year, the percentage of eleventh grade students enrolled at Olney who scored proficient or advanced on the Keystone Exam in Algebra I has been substantially lower than the percentage of all students in grade 11 enrolled in School District schools and charter schools who scored proficient or above:

Keystone Algebra 1: Students Scoring Proficient/Advanced					
Year	Olney	School District		Charter Sector	
	Rate	Rate	Difference	Rate	Difference
2010-11 (Pre-Turnaround)	18%	39%	-21%		
2011-12	32%	41%	-9%	44%	-12%
2012-13	30%	42%	-12%	39%	-9%
2013-14	25%	43%	-18%	40%	-15%
2014-15	21%	43%	-22%	42%	-21%
2015-16	24%	48%	-24%	46%	-22%
2016-17	17%	38%	-21%	39%	-22%
2017-18	16%	43%	-27%	38%	-22%

(Ex. SD[O] 19, Table 1; Tr. vol. 1, at 135.)

127. Olney's Algebra I scores have not consistently improved over the years. The 2017-18 results reflect Algebra I performance that is 14 percentage points lower than in the 2012-13 school year and 2 percentage points *lower* than before the charter began. (Tr. vol. 1, at 135.)

128. Since the 2012-13 school year, the percentage of eleventh grade students enrolled at Olney who scored proficient or advanced on the Keystone Exam in Literature has also been substantially lower than the percentage of all students in grade 11 enrolled in School District schools and charter schools who scored proficient or above:

Keystone Literature: Students Scoring Proficient/Advanced					
Year	Olney	School District		Charter Sector	
	Rate	Rate	Difference	Rate	Difference
2010-11 (Pre-Turnaround)	15%	46%	-31%		
2011-12	30%	46%	-16%	48%	-18%
2012-13	38%	56%	-18%	55%	-17%
2013-14	40%	56%	-16%	55%	-15%
2014-15	25%	54%	-29%	56%	-31%
2015-16	34%	61%	-27%	60%	-26%
2016-17	21%	48%	-27%	53%	-32%
2017-18	20%	54%	-34%	51%	-31%

(Ex. SD[O] 19, Table 3; Tr. vol. 1, at 137-138.)

129. Olney's Literature scores initially improved, but have decreased dramatically since 2013-14. The 2017-18 results are 10 percentage points lower than in the first year of the charter.

130. Since the 2012-13 school year, the percentage of eleventh grade students enrolled at Olney who scored proficient or advanced on the Keystone Exam in Biology has also been substantially lower than the percentage of all students in grade 11 enrolled in School District schools and charter schools who scored proficient or above:

Keystone Biology: Students Scoring Proficient/Advanced					
Year	Olney	School District		Charter Sector	
	Rate	Rate	Difference	Rate	Difference
2010-11 (Pre-Turnaround)	0%	16%	-16%		
2011-12	2%	17%	-15%	12%	-10%
2012-13	5%	22%	-17%	18%	-13%
2013-14	14%	28%	-14%	25%	-11%
2014-15	11%	33%	-22%	30%	-19%
2015-16	16%	40%	-24%	36%	-20%
2016-17	7%	36%	-29%	33%	-26%
2017-18	9%	40%	-31%	33%	-24%

(Ex. SD[O] 19, Table 2; Tr. vol. 1, at 135-137.)

131. Olney’s Biology scores have not continuously or substantially improved over the years. The 2017-18 results reflect Biology performance that is only 4 percentage points higher than in the 2012-13 school year, and reflect a decline of 8 percentage points since the high of 16% in the 2015-16 school year.

132. The School District rates in the tables above reflect the scores of all students who attended School District operated high schools, including students attending neighborhood schools, special admission schools and city-wide admission schools, covering the entire range from the lowest to the highest scoring schools. (Tr. vol. 1, at 133.)

133. The Charter Sector rates in the tables above reflect the scores of all students who attended brick and mortar charter schools in Philadelphia, including all the Renaissance charter schools, covering the entire range from the lowest to the highest scoring schools. (Tr. vol. 1, at 133-134.)

134. A higher percentage of Olney’s students scored below basic in Algebra I and Literature in 2017-18 than in 2014-15 (other than 0.7% difference in Algebra I), 2015-16 and 2016-17. (Cf. Ex. JE[O] 39-42.)

Subgroup Performance

135. Subgroup performance on standardized assessments has been tracked beginning with the No Child Left Behind Act “because the idea was that maybe some of these kids were being left behind by looking at just an aggregate score or like an overall score for the school.” (Tr. vol. 9, at 118:14-22.)

136. In its Required Federal Reporting Measures (“RFRM”) report for 2013-14, PDE reported on whether Olney met the State’s Annual Measurable Objectives (“AMOs”) in reading/literature and in mathematics/Algebra I. The only subgroup to meet the AMO in

Algebra I was the Asian subgroup—all students and all other measured subgroups did not meet the AMO. In Literature, only the Asian and female subgroups met the AMO; all students and other measured subgroups did not. (Ex. JE[O] 11, at 3-4; Tr. vol. 1, at 190-192.)

137. The SPP collapses the various subgroups into one subgroup called historically underperforming students. (Tr. vol. 9, at 119:2-13.)

138. The SPP also measures how a school performs in closing the achievement gap for all students and for historically underperforming students:

The achievement gap performance measure is determined by comparing the percent of students who are proficient or advanced in a baseline year with 100% proficiency. Once the achievement gap is determined, schools are measured on the success in closing that gap. The benchmark for success is defined as fifty percent (one-half of the achievement gap) closed over a six-year period. This success rate is measured annually such that if a school is on track or exceeding the annual rate needed to close the gap, a score of 80 is earned. *A school not making any progress in closing the gap or even widening the gap earns a score of zero.*

(Ex. JE[O] 22 at 10; Ex. JE[S] 17, at 10 (emphasis added).)

139. A zero “is the lowest score a school could obtain.” (Tr. vol. 1, at 146:14-18.)

140. Historically underperforming students, as that term is defined by the State, includes special education students with an Individualized Education Program (“IEP”), English Language Learners (“ELLs”) and economically disadvantaged students. (Ex. JE[O] 22, at 11; Tr. vol. 1, at 247-248.)

141. Through the SPP system, PDE determined that it was appropriate to monitor how public schools were serving historically underperforming student populations, to determine whether schools were successfully closing the achievement gap for those student groups.

142. Olney has not shown consistent or sustained success in closing the achievement gap for the totality of its students or its historically underperforming students:

Olney's Indicators of Closing the Achievement Gap (All Students)			
Year	Math/Algebra I	ELA/Literature	Science/Biology
2012-13	Not reported	Not reported	Not reported
2013-14	NA	NA	100
2014-15	0	0	41.05
2015-16	0	0	45.89
2016-17	0	0	11.21

Olney's Indicators of Closing the Achievement Gap (Historically Underperforming Students)			
Year	Math/Algebra I	ELA/Literature	Science/Biology
2012-13			
2013-14	NA	NA	100
2014-15	0	0	39.92
2015-16	0	0	44.23
2016-17	0	0	4.10

(Ex. JE[O] 15 at 3-5; Tr. vol. 1, at 125-127.)

Growth Measures

143. PVAAS “is a performance measure represent[ing] the academic growth of students taking the [PSSA or Keystone Exam] relative to changes in their achievement level/entering achievement during the reported year.” “The PVAAS Growth Index is the growth measure (change of the achievement level for a group of students across grades) divided by the standard error (level of evidence one has around a particular measure in relationship to the amount of growth made with a group of students).” The PVAAS Growth Index is then converted to a scale ranging from 50 to 100, as follows:

If the PVAAS Growth Index for a school is a zero, then the school score is 75. If the PVAAS Growth Index is 3 or higher, the school performance measure score is 100. If the PVAAS Growth Index is -3 or lower, the school score is 50. (A score can be no lower than 50.) Performance measure scores are scaled proportionally within the range of -3 to +3; -3 to -2 (50.0 to 60.0), -2 to -1 (60.0 to 70.0); -1 to +1 (70.0 to 80.0); +1 to +2 (80.0 to 90.0); and +2 to +3 (90.0 to 100.0).

(Ex. JE[O] 22, at 9.)

144. PVAAS is a component of SPP and the FRI. (Tr. vol. 1, at 145:14-23.)

145. Average Growth Index (“AGI”) is a component of PVAAS, which measures whether students are meeting the projection for growth. (Tr. vol. 1, at 148; Ex. Olney 281, at 44:10-45:12.)

146. According to Dr. Schuh, “by design,” PVAAS does not take into account the demographics of a school. (Tr. vol. 9, at 140:11-13.)

147. In Olney’s Charter, Olney agreed to use its best efforts to achieve the PVAAS growth measure for each year during the five-year term. (Ex. JE[O] 2, at 20.)

148. The growth standard developed by PDE and SAS (PDE’s contractor for PVAAS) is a score between negative one and one. (Tr. vol. 1, at 147.)

149. Olney’s AGI results were as follows:

Olney’s PVAAS Average Growth Index Values				
Year	Algebra I	Biology	Literature	
2012-13	1.63	5.70	-1.79	
2013-14	1.25	-0.14	-6.93	
2014-15	-1.92	-2.22	-6.78	
2015-16	-0.96	-3.09	-9.05	
2016-17	-1.10	-2.70	-4.80	
2017-18	-3.07	-5.57	-7.28	
PVAAS Legend				
Significant Evidence Not Meeting PA Standard for Growth	Evidence of Not Meeting PA Standard for Growth	Evidence of Meeting PA Standard for Growth	Evidence of Exceeding PA Standard for Growth	Significant Evidence of Exceeding PA Standard for Growth

(Ex. SD[O] 19, at Table 4; Ex. JE[O] 18-21; Tr. vol. 1, at 146-147.)

150. Olney produced PVAAS data for the 2016-17 school year, which became available to Olney in July 2017. (Tr. vol. 6, at 128:21-129:5.) This corroborates the PVAAS/AGI data reflected in the table above for the 2016-17 school year. (Ex. Olney 54, at 1.) In addition, the document Olney produced provides some additional breakdown of PVAAS

growth data. For first time test takers, the three-year average of School Value Added data, the growth measure is in the “significant evidence not meeting PA Standard for Growth” category (red) in Algebra I, Literature and Biology. (Ex. Olney 54, at 2-4; Tr. vol. 6, at 120-121.) The growth measures reported in Exhibit Olney 54 on pages 2-4 differ from the growth measures reported for 2015-17 by PDE overall, which would add support to Ellen Green’s suggestion that the data on those particular pages is reflective of first time test takers only.

151. Ms. Green suggested that the PVAAS data reported by the State in the SPP and the FRI is only for first-time test-takers (Tr. vol. 6, at 124-125), but her understanding is not consistent with the materials published by PDE regarding the scores of students included within the PVAAS calculations.⁷ (Ex. JE[O] 22, at 9; Ex. JE[O] 24, at 4.)

152. Olney did not produce any similar PVAAS data for the 2017-18 school year to show how any student groups performed within the red areas noted in Table 4. (Tr. vol. 6, at 129:19-130:4.)

Graduation Rates

153. Graduation rates were calculated for Olney using two different methodologies: (a) PDE’s methodology and (b) the School District’s methodology. The main difference in the methodologies relates to the time frame for which data is being reported. At the state level, PDE reports the data on a one-year lag; at the School District level, the data is reported as of the September 30 following when a student would be expected to graduate. (Ex. SD[O] 19; Ex. SD[O] 17, at 14; Tr. vol. 1, at 150-151; Tr. vol. 8, at 222:6-224:20.)

⁷ Dr. Schuh also believed that PVAAS only includes scores for first-time test takers. (Tr. vol. 9, at 136:8-10). However, he did not provide any support for this under the PVAAS literature available, and the calculations noted above do not support his assertion. The data provided by Ms. Green reflects differing PVAAS scores for aggregate performance compared to the more specific performance of first-time test takers for the 2016-2017 school year.

154. Using PDE's methodology, Olney's graduation rates compared to the School District average and charter school sector average graduation rates as follows:

Four-Year Graduation Rates (PDE Method)					
Year	Olney	School District		Charter Sector	
		Rate	Difference	Rate	Difference
2011-12	78%	62%	16%	73%	5%
2012-13	58%	71%	-13%	79%	-21%
2013-14	53%	79%	-26%	84%	-31%
2014-15	62%	74%	-12%	83%	-21%
2015-16	71%	75%	-4%	83%	-12%
2016-17	70%	74%	-4%	89%	-19%

(Ex. SD[O] 19, Table 6; Tr. vol. 1, at 153.)

155. Olney did not meet the State's graduation rate goals in 2013-14 and 2014-15, as calculated in the RFRM reports for those years, and in 2017-18, as calculated in the FRI. (Ex. JE[O] 11, at 2; Ex. JE[O] 12, at 2; Ex. JE[O] 23, at 9.)

156. Using PDE's methodology, Olney's graduation rates have dropped eight percentage points since the first year of the charter term, with even further drops within those years.

157. Using the School District's methodology,⁸ Olney's graduation rates compared to the School District average and charter school sector average graduation rates as follows:

⁸ Ms. Green first testified that the School District's methodology only looked at graduation data through the end of the school year, but then admitted that she did not know the answer. (Tr. vol. 6, at 76: 20-24, 196-197). Her initial testimony was incorrect, because the SPR User Guide and business rules provide for a September 30 cut-off date. (Ex. SD[O] 17, at 14).

Four-Year Graduation Rates (School District Method)⁹					
Year	Olney	School District		Charter Sector	
		Rate	Difference	Rate	Difference
2013-14	55%	75%	-20%	74%	-19%
2014-15	60%	74%	-14%	80%	-20%
2015-16	65%	75%	-10%	82%	-17%
2016-17	63%	79%	-16%	79%	-16%

(Ex. SD[O] 19, Table 5.)

158. Using the School District’s methodology, Olney’s graduation rates have improved by eight percentage points, but have consistently remained substantially below the School District’s and the Charter School Sector as a whole.

Annual Measureable Objectives

159. Under the federal Elementary and Secondary Education Act (“ESEA”)/No Child Left Behind Act (“NCLB”), PDE sought and received an ESEA Flexibility Waiver to provide for a state-led accountability system for identifying high-performing and struggling Title I schools—those schools with a high percentage of low-income students. The Flexibility Waiver took effect for the 2013-14 school year. (Ex. Olney 49, at 1.)

160. Under the Flexibility Waiver, PDE had to designate schools based on performance criteria and four AMOs: Test Participation Rate; Graduation Rate/Attendance Rate; and Closing the Achievement Gap for All Students and Historically Underperforming Students. A Title I school may be designated as one of the following: Reward (High

⁹ The School District’s methodology was revised for the 2013-14 school year, so these rates should not be compared to prior years. The School District’s methodology differs from PDE’s in two key areas: (a) the School District produces rates in the fall of each cohort’s graduation year, whereas PDE calculates graduation rates on a one-year lag; and (b) while both the School District and PDE remove some students from the cohort calculations due to their specific circumstances (such as moving to another state), the exact set of circumstances are not fully aligned.

Achievement), Reward (High Progress), Focus, Priority and No Designation. (Ex. JE[O] 22, at 13; Ex. Olney 49, at 3; Tr. vol. 1, at 118.)

161. Focus schools are defined as the lowest 10% of Title I schools based on highest achievement gap for the Historically Low Performing students AMO or Title I school with a graduation rate below 60% or test participation below 95% and not a Priority school. (Ex. Olney 49, at 5.)

162. Priority schools are defined as the lowest 5% of Title I schools based on aggregate math and reading proficiency on the PSSA and/or Algebra I/Literature for Keystone Exams, or Title I schools receiving School Improvement Grant funds. (Ex. Olney 49, at 5.)

163. The demographics of a school did not factor into whether a school was designed to be Priority. However, low achievement by students in the Historically Low performing group did affect consideration as a Focus school. (Tr. vol. 15, at 172:13-174:10.)

164. Priority schools will “receive assistance from PDE to implement interventions that will respond to the specific needs of the students in the school. PDE will provide liaisons to facilitate and support Priority schools’ use of the training, technical assistance, and tools available to them from PDE. Improvement plans are required and will consist of interventions that must be directly related to identified needs based on the AMOs.” (Ex. Olney 49, at 5.)

165. Olney is a Title I school. (Tr. vol. 1, at 189:13-21.)

166. PDE designated Olney as a Priority school in 2012 and through the 2016-17 school year. (Ex. JE[O] 32-33; Tr. vol. 1, at 193; Tr. vol. 4, at 268-269.)

Effect of Demographic Differences

167. While Olney has historically enrolled a higher percentage of ELL and special education students than the percentages in School District schools, the School District schools

have historically had a higher percentage of economically disadvantaged students than Olney. (Ex. JE[O] 17, at 5; Ex. JE[O] 30, at 2; Ex. JE[O] 31, at 2; Ex. SD[O] 26, at 3; Ex. Olney 55, at 2.)

168. Olney West and Olney East also had a large percentage of ELL students, which is why ASPIRA touted its experience with such students in its other charter schools when it applied to be the turnaround team for those schools.

169. Prior to ASPIRA seeking the charters for the Charter Schools, for public schools receiving federal funds under Title I, NCLB required State-assessment scores to be reported out for all subgroups of students, the idea being “to bring attention to groups . . . that might have been overshadowed by an average score which tend to be how school districts had reported scores in the past. So culling out subgroups was one aspect of the law.” (Tr. vol. 14, at 55:4-56:11.)

170. Under NCLB, subgroups included economically disadvantaged students, ELLs, special education students, and racial/ethnic groups including Hispanic, black and white students. (*Id.* at 56:13-23.)

171. Under NCLB, subgroup performance factored into whether a school was making AYP if a school had at least 40 students in a particular subgroup. (*Id.* at 56:24-57:6.)

172. The SPP system continued to emphasize subgroup performance focusing on the historically underperforming group. (Tr. vol. 14, at 58:7-14.)

173. In the first year of management under ASPIRA, 2011-12, Olney had an ELL population of 18.98% and similar percentages over the next three years, going up to 20.16% by the 2014-15 school year. Olney’s special education population in the 2011-12 school year

was over 25% (390 out of 1549 students), with the percentage staying relatively constant through the 2014-15 school year. (Ex. JE[O] 34, at 2.)

174. ELLs do not take the State assessments in their first year of an ESL program. (Tr. vol. 15, at 230:7-18.)

175. In the 2011-12 school year, even with an ELL population of 18.98% and a special education population of over 25%, Olney managed to increase the percentage of students scoring proficient or advanced on the eleventh grade PSSA exam by 15 percentage points in reading/writing and 14 percentage points in math. When the Keystone Exams came online in 2012-13, those percentages stayed relatively consistent in Algebra I and even improved in Literature through the 2013-14 school year, even with such percentages of ELLs and special education students. (Ex. SD[O] 19, Tables 1 and 3.)

176. Subgroup performance on the PSSA and Keystone Exams, as applicable, is reported in the RFRM reports and on the ACE Reports issued by the CSO. The RFRM reports reflect the performance of banked eleventh grade data for each school year. In contrast, the ACE Reports reflect the percentage of students scoring proficient or advanced who took the applicable exam during the school year for which data is reported. (Tr. vol. 1, at 138-140, 144.)

177. Certain special education students who are low functioning are able to take the PASA Exam. (Tr. vol. 4, at 234:19-21; Tr. vol. 6, at 102-103.)

178. The PASA Exam “uses performance tasks to measure the knowledge and skills of students with significant cognitive disabilities.” (Ex. JE[O] 11, at 9.)

179. PASA data is reported in the RFRM reports. However, according to the 2014-15, 2015-16, and 2016-17 RFRM reports, Olney did not have any PASA data available in any

of those three school years, which would signify that an insufficient number of students qualified to take the PASA exam. (Ex. JE[O] 12, at 10; Joint 13, at 10; Joint 14, at 10.)

180. The last year that PASA data is available for Olney is in the 2013-14 RFRM report, which reported that students with significant cognitive disabilities were performing at the following proficiency rates on the PASA: 57% in math, 57% in reading, and 21% in science. (Ex. JE[O] 11, at 9-11.) Those PASA results were included in the overall proficiency percentages calculated for Olney in the RFRM report. (*Id.* at 3-4.)

181. PASA data also was not reported for 2012-13, according to the 2013-14 RFRM report.

182. PASA data is reported when there are more than 10 students taking the PASA. (See, e.g. Ex. JE[O] 11, at 9, Notes.)

183. The percent of students who are economically disadvantaged, special education or ELL may have an impact on the outcome of standardized test scores. (Ex. Olney 281, at 97:2-98:12.)

184. Accordingly, Olney seeks to blame its poor academic performance on its student demographics.

185. Olney correctly notes that economically disadvantaged students tend to have substantially lower proficiency rates than students who are not economically disadvantaged. However, on a percentage basis, Olney has *fewer* economically disadvantaged students than the School District does:

Economically Disadvantaged Students			
Year	Olney	School District	Difference
2015-16	52%	61%	-9%
2016-17	72%	74%	-2%
2017-18	67%	73%	-5%

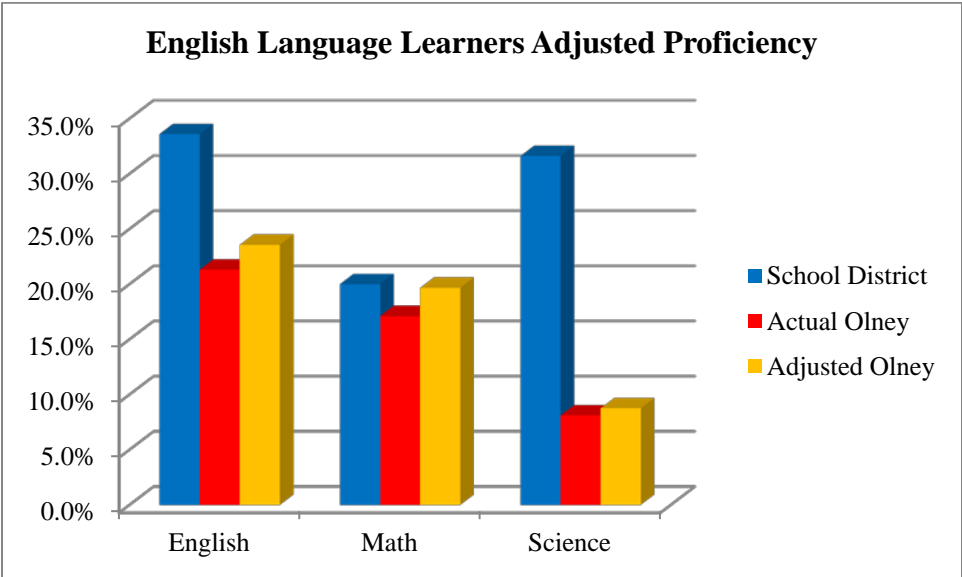
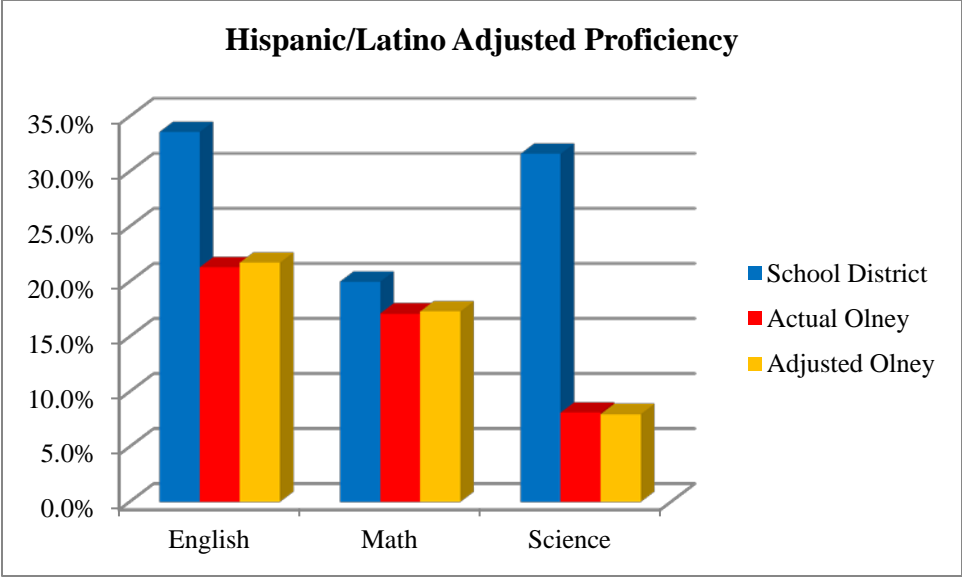
(Ex. JE[O] 30, JE[O] 31, SD 26.)

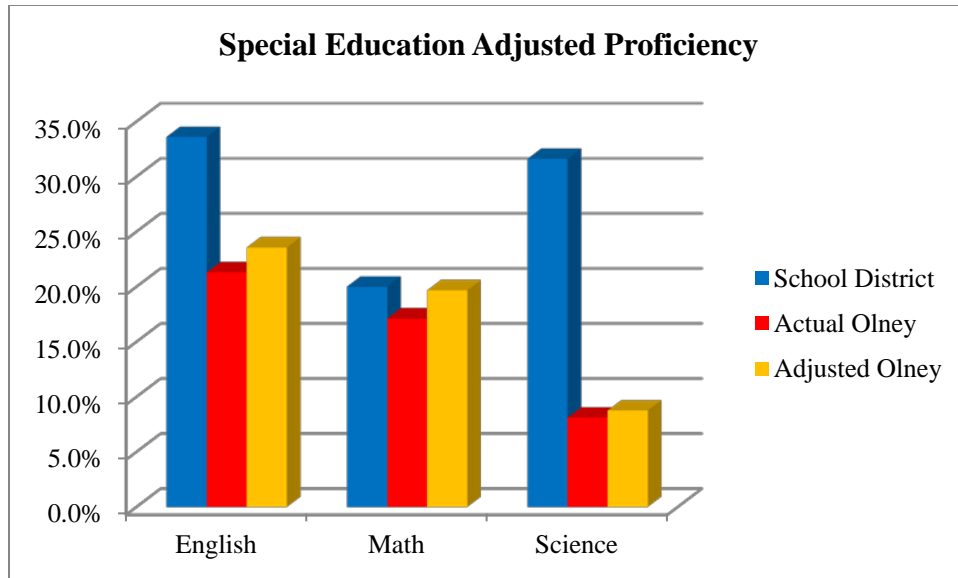
186. This should have resulted in *higher* proficiency rates for Olney, not the lower rates it achieved.

187. Similarly, Olney has more Hispanic/Latino students than the School District, but fewer Black students, and both groups had similar proficiency rates at Olney. (JE[O] 30, at 2, 4-6; Ex. JE[O] 31, at 2, 5-7; Ex. SD[O] 26, at 3, 6-8; Tr. vol. 1, at 140-143.)

188. Moreover, Olney's expert made no attempt to quantify the impact of its higher percentages of Hispanic/Latino students, ELLs, and special education students. (See Tr. vol. 13, at 235:23-239:17.) Thus, no evidence was presented to establish that Olney would have matched the School District's performance if it had the same demographics.

189. It is not surprising that Olney's expert made no effort to quantify the impact, because if such an analysis had been done, it is likely to have shown that having the same percentages of Hispanic/Latino students, ELLs, and special education students as the School District would have improved Olney's overall proficiency rates only slightly, to levels still below the School District's rates in math and still far below the School District's rates in English and Science. This is illustrated by the following charts:





190. The data in these charts is based on the most recent RFRM reports for Olney and the School District. (Ex. JE[O] 14, HO[O] 124.)¹⁰ The adjustments were calculated by reducing the number of Olney’s tested students in each category to the percentage of all of its tested students that equaled the percentage of the School District’s tested students in the same category. The adjusted proficiency rates were then determined based on these revised numbers of tested students in each group and Olney’s average rates for each group, to approximate the overall results that Olney might have attained if it had the same percentages of Hispanic/Latino, ELL, and special education students as the School District. (Ex. HO[O] 125.)

191. This analysis is necessarily imprecise, but it clearly illustrates that it would not be reasonable to simply presume that Olney’s performance would have matched the School District’s performance if their demographics had been the same.

¹⁰ The School District’s RFRM report was not submitted by either party as an exhibit, but its data may be judicially noticed, because it is not subject to reasonable dispute and can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. *See* Pa. R. Evid. 201.

192. The impact of the demographic differences on Olney’s overall results is slight (a) because Olney also has many students who are not in the subgroups, and (b) because the performance of the subgroups at Olney is significantly worse than their performance at the School District’s schools.

193. Based on the undisputed data in the ACE Reports, the following charts compare the performance of various subgroups at Olney to the performance of those same subgroups in School District-operated schools:¹¹

Keystone Literature Proficiency Rates by Student Group						
Subgroup	2015-16		2016-17		2017-18	
	Olney	School District	Olney	School District	Olney	School District
All Students (11th grade banked)	34%	55%	21%	48%	20%	54%
All Students (within year)	13%	38%	14%	43%	11%	38%
Female	14%	45%	16%	50%	14%	44%
Male	13%	31%	13%	36%	9%	32%
Asian	29%	59%	26%	64%	21%	66%
Black	13%	33%	13%	37%	12%	30%
Hispanic/Latino	13%	29%	14%	33%	11%	30%
Multi-race/Other	*	*	*	63%	*	47%
White	*	*	*	59%	*	58%
ELLs	2%	10%	1%	10%	7%	35%
Special Education	3%	7%	4%	9%	6%	13%

Keystone Algebra I Proficiency Rates by Student Group						
Subgroup	2015-16		2016-17		2017-18	
	Olney	School District	Olney	School District	Olney	School District
All Students (11th grade banked)	24%	43%	17%	38%	16%	43%

¹¹ An asterisk indicates that no data was reported because the number of students in the subgroup was insufficient for a valid sample.

Keystone Algebra I Proficiency Rates by Student Group						
Subgroup	2015-16		2016-17		2017-18	
	Olney	School District	Olney	School District	Olney	School District
All Students (within year)	9%	16%	6%	18%	4%	16%
Female	9%	17%	5%	20%	4%	17%
Male	8%	14%	6%	16%	4%	14%
Asian	26%	39%	26%	44%	18%	39%
Black	5%	12%	4%	13%	3%	12%
Hispanic/Latino	9%	11%	6%	12%	4%	11%
Multi-race/Other	*	*	*	23%	*	18%
White	*	*	*	29%	*	31%
ELLs	2%	6%	2%	7%	1%	13%
Special Education	3%	3%	1%	2%	1%	4%

Keystone Biology Proficiency Rates by Student Group						
Subgroup	2015-16		2016-17		2017-18	
	Olney	School District	Olney	School District	Olney	School District
All Students (11th grade banked)	16%	36%	7%	36%	9%	40%
All Students (within year)	6%	23%	5%	29%	4%	26%
Female	5%	26%	3%	30%	4%	28%
Male	6%	20%	7%	27%	4%	24%
Asian	20%	51%	14%	56%	23%	57%
Black	4%	17%	5%	22%	2%	18%
Hispanic/Latino	6%	17%	4%	17%	4%	17%
Multi-race/Other	*	*	*	39%	*	32%
White	*	*	*	46%	*	44%
ELLs	2%	5%	2%	8%	1%	25%
Special Education	1%	3%	2%	6%	1%	10%

(Ex. JE[O] 30, at 4-6; Ex. JE[O] 31, at 5-7; Ex. SD[O] 26, at 6-8; Tr. vol. 1, at 140-143.)

194. This shows that Olney has not done nearly as well as the School District with ELLs and students with IEPs, and has been consistently falling further behind:

2015-16 Proficiency	Literature		Algebra I		Biology	
	ELL	IEP	ELL	IEP	ELL	IEP
School District	10%	7%	6%	3%	5%	3%
Olney	2%	3%	2%	3%	2%	1%
Difference	-8%	-4%	-4%	0%	-3%	-2%

2016-17 Proficiency	Literature		Algebra I		Biology	
	ELL	IEP	ELL	IEP	ELL	IEP
School District	10%	9%	7%	2%	8%	6%
Olney	1%	4%	2%	1%	2%	2%
Difference	-9%	-5%	-5%	-1%	-6%	-4%

2017-18 Proficiency	Literature		Algebra I		Biology	
	ELL	IEP	ELL	IEP	ELL	IEP
School District	35%	13%	13%	4%	25%	10%
Olney	7%	6%	1%	1%	1%	1%
Difference	-28%	-7%	-12%	-3%	-24%	-9%

(Ex. JE[O]-30, JE[O]-31, SD[O]-26.)

195. For all of these reasons, Olney’s contention that its poor academic performance is merely a reflection of demographic differences is simply not credible.

196. The substantial differences for ELL students are especially troubling given Olney’s large concentration of Hispanic/Latino students.

Future Ready Index

197. The FRI was created by PDE and approved by the United States Department of Education as part of a consolidated plan that Pennsylvania submitted under the Every Student Succeeds Act (“ESSA”). Although SPP is still being calculated since the 2016-17 school year, the FRI has replaced SPP for purpose of accountability under ESSA. (Tr. vol. 1, at 129:2-130:2.)

198. The FRI includes two “On Track Measures”: English Language Proficiency and Regular Attendance. Olney did not meet the performance standard for attendance for any

students, as addressed in more detail below. Nor did Olney meet the interim goal/improvement target established by PDE in the area of English Language Proficiency. Students with limited English proficiency who were assessed with the ACCESS test only scored 16.9%, which failed to meet the standard and was below the statewide average of 35.7%. (Ex. JE[O] 23, at 7; Tr. vol. 1, at 186-187.)

199. The English Language proficiency indicator in the FRI reflects “the percentage of English Learners who met their interim growth toward, or attainment level, of English language proficiency as measured by the ACCESS for ELLs.” (Ex. JE[O] 24, at 7.)

200. FRI continues to use PVAAS/AGI data as part of the reporting system. (Tr. vol. 9, at 159:4-11.)

201. Beginning in the 2017-18 school year, under the FRI and ESSA, PDE developed a plan to identify schools for support and improvement that replaces the Focus/Priority designations discussed above. The two designations are Comprehensive Support and Improvement (“CSI”) and Targeted Support and Improvement (“TSI”). CSI schools must include at least the lowest-performing 5 percent of a State’s Title I schools, as well as any high school with an adjusted cohort graduation rate of 67 percent or less. (Ex. JE[O] 24, at 20.)

202. Olney has been designated as a CSI school for the 2017-18 school year because it fell within the lowest-performing 5% of all Title I schools in Pennsylvania. (Ex. JE[O] 25; Tr. vol. 1, at 194-195.)

203. Olney’s Principal, James Thompson (“Thompson”) believed that Olney received this designation for “poor supports for our ELL and our English Language Arts. So basically supporting them in testing.” (Tr. vol. 4, at 201:14-24.)

Inclusion of Special Admission Schools in Comparisons

204. The School District operates special admission and citywide admission schools that have varying criteria for enrollment. (Tr. vol. 2, at 25-27.)

205. According to a report issued by the PEW Charitable Trust (“PEW”), however, there are significant numbers of students enrolled in selective admission schools and citywide admission schools with academic criteria who do not meet the published criteria. (Ex. Olney 255; Tr. vol. 2, at 95:14-98:22.)

206. PEW published a report in September 2017 analyzing data provided by the School District regarding student enrollment during the 2014-15 school year. Specifically, the study looked at data from students who were eighth graders in the 2014-15 school year who would have participated in the school selection process during that school year for being a ninth grader or entrance into high school in the 2015-16 school year. The study looked at data where they were in eighth grade 2014-15 and where they ended up in high school in 2015-16. (Ex. Olney 255.)

207. According to Dr. Schuh, the PEW Charitable Trust is a reputable entity in regards to public education research. (Tr. vol. 9, at 105:1-4.)

208. Four types of high schools are available in the School District—special admission, citywide, neighborhood and charter schools. During the 2015-16 school year, there were 21 special admission high schools, 121 city-wide admission high schools and programs in various school buildings, 24 neighborhood high schools and 43 charter schools serving high school grades. (Ex. Olney 255, at 7.) Special admission schools have academic, attendance and behavioral criteria for enrollment, “[b]ut the importance of each criterion varies from school to school, based on the judgment of the principal. Special admission school principals also have considerable leeway in how they enforce the criteria, sometimes ignoring their

school's stated admissions standards.” (Ex. Olney 255, at 7.) Most citywide admission schools are selective but with less stringent academic, attendance and behavior criteria than the special admission schools. Neighborhood schools are open to anyone who can prove residence within a school's neighborhood boundaries, but “[s]tudents may also apply to neighborhood schools outside their area and can be awarded seats based on availability.” (*Id.* at 8.)

209. Of the ninth graders enrolled in the four categories of schools in the 2015-16 school year, 26% attended special admission high schools, 16% attended citywide admission schools, 27% attended neighborhood schools, and 30% attended charter schools. (Ex. Olney 255, at 7-8.)

210. The PEW report made a number of pertinent findings:

a. 14% of all eighth grade students with proficient or advanced scores on the seventh grade PSSA did not apply for enrollment in a special admission school. (Ex. Olney 255, at 14.)

b. For those eighth graders with proficient or advanced PSSA scores who did apply, 22% were not admitted to a special admission school. (Ex. Olney 255, at 17.)

c. Of the eighth graders who were admitted to special admission schools, 20% of them did not meet the published minimum academic qualifications. (Ex. Olney 255, at 18.) At particular special admission schools, the percentage of enrolled ninth graders who did not meet the minimum academic criteria was much higher—at Lankenau High School, Walter B. Saul High School, Parkway West High School, Parkway Northwest High School and Motivation High School, at least half of the

students enrolling for ninth grade did not meet the minimum standardized test scores. (Ex. Olney 255, at 19.)¹²

d. 14% of students with advance or proficient standardized test scores were accepted by special admission schools but chose not to attend. (Ex. Olney 255, at 20.)

e. Of the ninth grade students who were enrolled in a charter school in eighth grade, 70% of them also enrolled in a charter school for ninth grade, either the same charter school or a different charter school. (Ex. Olney 255, at 24.)

f. In math specifically, 12% of ninth graders in special admission schools and 61% of ninth graders in citywide admission schools had not scored proficient or advanced. (Ex. Olney 255, at 30.)

g. Students receiving special education support accounted for 30% of ninth graders at neighborhood schools, compared to 19% overall. (Ex. Olney 255, at 31.)

211. There are students enrolled in special admission schools who are not scoring proficient or advanced on the PSSAs or Keystone Exams. (Tr. vol. 8, at 221:8-22.)

212. Olney did not present any evidence of what the School District's proficiency percentages would be with the special admission schools or any other schools removed.

213. The students enrolled in special admission schools and citywide admission schools are resident students of Philadelphia entitled to attend School District schools.

214. If the School District did not have special admission schools or citywide admission schools, then those students would be enrolled in their neighborhood schools unless their parents exercised a different choice. As a result, the scores of the neighborhood schools

¹² Lankenau High School, Parkway Northwest, Motivation High School and Parkway West are all schools that were in the Charter School's peer group in the 2015-2016 SPR, which the Charter School suggests had selective admission requirements. (Ex. Olney 55, at 3; Tr. vol. 6, at 51-52).

would presumably increase due to the inclusion of the scores of some—but not all—students who attend special admission schools.

215. If one were to remove the scores of students attending special admission schools or citywide admission schools from the School District proficiency rate, the calculation would no longer reflect the actual proficiency rate of all students enrolled in School District schools.

216. When comparing the School District's overall performance to Olney's overall performance, excluding the best performing School District schools would be as unfair to the School District as excluding the worst performing School District schools would be to Olney.

217. Accordingly, when comparing Olney's overall performance to the School District's overall performance, all School District schools must be included.

Performance Under School District Accountability Systems

218. Under the Renaissance Initiative, Olney's performance was expected to equal at least the median performance of all School District schools by the end of the final year of its charter term. (Tr. vol. 1, at 236-237.)

219. The SPI included four components: (1) Student Progress measured by growth on the PSSA; (2) Student Achievement on the PSSA, including percent of proficient or advanced, percent below basic, and achievement gap; (3) Post-Secondary Readiness factors (for high schools only) including on-time graduation rate, ninth grade on-track, SAT participation and college enrollment; and (4) Satisfaction & Engagement, including student attendance rate, student satisfaction, parent satisfaction, parent survey response rate and teacher satisfaction. (Ex. JE[O] 2, at 45; Ex. Olney 282; Ex. Stetson 255.)

220. After Olney received its charter, the School District replaced the SPI with the SPR, beginning in the 2013-14 school year. (Tr. vol. 9, at 207:24-208:18.)

221. Since the 2014-15 school year, all charter schools in Philadelphia have been participating in the SPR, with the exception of one to three schools. (Tr. vol. 1, at 103:21-23.)

222. According to Dr. Schuh, the SPR is an “annual report card created by the School District.” (Tr. vol. 9, at 56:15-19.)

223. The SPR uses several different metrics and reports a score of up to 100. The scores are broken down into ranges designated as tiers: a 0 to 24.9 score tier labeled “Intervene”; a 25 to 49.9 score tier labeled “Watch”; a 50 to 74.9 score tier labeled “Reinforce”; and a 75 to 100 score tier labeled “Model.” (Ex. JE[O] 26-29; Tr. vol. 1, at 105, 159.)

224. The SPR for K-8 schools contains three domains: achievement, progress, and climate. The SPR for high schools contains one additional domain: college & career. (Ex. JE[O] 26-29; Tr. vol. 1, at 105-106.)

225. The SPR reports include information regarding the metrics evaluated under each domain, the score for each metric, and the number of points earned. The metrics in each domain have not fluctuated significantly from year to year. (Ex. JE[O] 26-29; Ex. SD[O] 10.)

226. The achievement domain measures performance on standardized assessments, including the PSSA and Keystone exams, ACCESS for ELLs and reading assessments. (Ex. JE[O] 26-29, each at 1.)

227. The progress domain measures growth on standardized assessments and progress towards graduation, if applicable. (Ex. JE[O] 26-29, each at 1.)

228. The climate domain measures school attendance, annual retention, suspension rates and survey results from both parents and students as part of parent/guardian engagement. (Ex. JE[O] 26-29, each at 1.)

229. The college and career domain measures the four year cohort graduation rate, AP/IB and NOCTI exam performance, SAT/ACT college readiness benchmarks, the percent of seniors who complete the FAFSA for college aid and student survey results. (3/12/19 NT. 162:5-16.)

230. The SPR also includes a city rank showing how the school ranks among all other city schools of its type, and a peer rank showing how the school ranks among demographically similar schools of its type. Schools are ranked against other schools with similar grade configurations. Peer rankings are based on schools that have similarities in rates of economically disadvantaged students, special education students, ELLs, and students who are black or Hispanic. (Ex. JE[O] 26-29, each at 1; Ex. SD[O] 10; Ex. SD[O] 13; Tr. vol. 1, at 163-165.)

231. In comparison to the SPR, the SPI framed performance relative to the median. Schools received a score from one to ten, one being the best, ten being the worst. A school that scored a five would be performing at the median of all schools. In contrast, on the SPR, the score is 0-100. The components of SPI and SPR are similar. Both systems looked at the percent of students passing the state mandated exams, student growth, climate metrics including retention and attendance and survey metrics. (Ex. Olney 250-251, 282; Tr. vol. 1, at 106-107.)

232. Olney’s Charter does not include performance requirements relative to peer schools, as opposed to School District schools as a whole. (Ex. JE[O] 2; Tr. vol. 1, at 165:10-21.)

233. Olney received an SPR for the 2013-14, 2014-15, 2015-16, 2016-17 and 2017-18 school years.¹³

234. The following table identifies Olney’s Overall score in each year, the performance tier based upon that Overall score, and the City Rank as a result of that Overall score:

Year	Olney	SPR Tier	City Rank
2013-14	25	Watch	45 of 71
2014-15	18	Intervene	58 of 82
2015-16	21	Intervene	51 of 83
2016-17	20	Intervene	61 of 84
2017-18	12	Intervene	71 of 83

(Ex. SD[O] 10-11; Ex. SD[O] 19, Table 10; Ex. JE[O] 26-29.)

235. Olney scores for each domain were as follows:

Year	Achievement	Progress	Climate	College & Career
2013-14	Intervene	Watch	Watch	Intervene
2014-15	Intervene	Watch	Watch	Intervene
2015-16	Intervene	Watch	Watch	Intervene
2016-17	Intervene	Watch	Watch	Intervene
2017-18	Intervene	Intervene	Watch	Intervene

(Ex. SD[O] 10; Ex. JE[O] 26-29.)

¹³ Olney agreed to participate in and be held accountable under the School District’s accountability performance system. In contrast, in the Eastern University Academy Charter School (“Eastern”) nonrenewal case, a case involving a non-Renaissance charter school, Eastern did not agree in its charter to be held accountable under the SPR. As such, Eastern was not evaluated based upon the SPR. (Ex. Olney 281, at 93:13-23).

236. Olney's scores compared to the average SPR scores of all School District schools and all charter schools as follows:

Year	Olney	School District	Charter Sector
2013-14	25	33	44
2014-15	18	31	37
2015-16	21	32	41
2016-17	20	34	44
2017-18	12	34	40

(Ex. SD[O] 19, Table 9; Ex. JE[O] 26-29; Ex. SD[O] 10.)

237. Olney presented various demographic data and achievement data found in charts in Olney Exhibit 63. The charts on pages 1-3 contained demographic data for those peer schools that were identified in the SPR peer groups for 2015-16, 2016-17 and 2017-18. According to this data, there are schools in Olney's peer groups who have higher percentages of economically disadvantaged students and higher percentages of special education students than Olney. (Ex. Olney 63, at 1-3; Tr. vol. 6, at 178-180.)

238. Olney also sought the admission of RFRM reports for a few (but not all) of the schools in its peer and/or similar schools groups from year to year. (Ex. Olney 6 (selected pages); Ex. Stetson 5 (selected pages).) Cherry-picking data from only a portion of these groups does not provide a fair comparison to Olney's performance, nor is it relevant to the Renaissance program requirements.

239. The non-Renaissance schools reflected in Olney Exhibit 63 are not subject to the same standards as Olney under the Renaissance Initiative. Nor did the Renaissance charter suggest that comparisons with a selection of schools in Philadelphia was the appropriate metric for academic performance under the Renaissance program.

240. To the extent that Peer rankings under the SPR would have any application to this matter despite not being part of the Renaissance charter, in 2017-18, Olney did not outperform a majority of its peer schools in the SPR categories, other than in climate: 12 out of 23 Overall, 15th out of 19 in achievement; 16th out of 23 in Growth; 10th out of 23 in Climate; and 12th out of 22 in College and Career. (Ex. SD[O] 13.)

241. Peer schools change from year to year due to changes in demographics at the schools or, when the CSO began using the similar schools group in the ACE Reports, changes in the methods of selection. (Tr. vol. 15, at 228:1-229:1.)

242. Olney presented testimony from Ms. Green who reviewed comparison data for 10 neighborhood high schools that she contended had similar demographics as Olney. (Ex. Olney 63, at 32-34; Tr. vol. 6, at 69-70, 188.)

243. However, Green did not consult Olney's Charter when she put together her comparisons to the 10 neighborhood schools. (Tr. vol. 6, at 194:11-17.) If she had, she would have known that Olney's charter did not consider comparisons with other neighborhood schools to be the appropriate measure of academic performance under the Renaissance program.

Expectations in the Charter

244. One of the Accountability Indicators in the Charter is the rate of violent incidents during the Charter term. (Ex. JE[O] 2, at 309.)

245. Based upon data publicly available from the Safe Schools reports that Olney submitted to PDE, Olney had the following violent incidents per 100 students, as compared to the target in Olney's Charter:

Violent Incidents Per 100 Students			
Year	Olney	Target	Difference
2011-12	22.5	9.6	-12.9
2012-13	17.4	5.7	-11.7
2013-14	4.3	3.8	-0.5
2014-15	14.1	1.8	-12.3
2015-16	7.2		
2016-17	2.3		
2017-18	5.7		

(Ex. SD[O] 19, Table 12; Ex. JE[O] 74-80; Tr. vol. 1, at 181-183.)

246. Olney has never reached the 1.8 target for violent incidents that was established in its Charter for 2014-15. (Tr. vol. 1, at 181.)

247. Olney’s Charter does not contain a metric related to the number of arrests, as opposed to the number of incidents.

248. Another “goal” Olney identified in its Charter Application as consistent with the School District’s Imagine 2014 strategic plan, was for students to be “excited to attend school every day.” (Ex. JE[O] 2, at 131.)

249. PDE reports average daily attendance (“ADA”) in the SPP, which measures the sum of the student’s average daily attendance divided by average daily membership multiplied by 100. Olney’s attendance rates were as follows: 82.05% in 2012-13; 85.65% in 2013-14; 83.81% in 2014-15; 84.22% in 2015-16; and 84.26% in 2016-17. (Ex. JE[O] 15 at 2, 4; Ex. JE[O] 22, at 12; Ex. JE[O] 37, at 2; Ex. JE[O] 38.)

250. At the hearing, Olney reported ADA figures for 2014-15 through 2016-17 which were similar to but not the same as the ADA figures reported by PDE for those same school years. (*Cf.* Ex. Olney 248 to Ex. JE[O] 15 at 2, 4; Ex. JE[O] 22, at 12; Ex. JE[O] 37, at 2; Ex. JE[O] 38; Tr. vol. 4, at 120-122.) Still other attendance percentages were included in

Olney's Exhibit 88, including an attendance percentage of 82.87% for the 2016-17 school year, the last year attendance is reported in that document. (Ex. Olney 88.)

251. PDE has not yet reported Olney's ADA for 2017-18. According to Mr. Thompson, Olney's ADA for 2017-18 fell to 79.94%, its lowest point since 2012-13. (Tr. vol. 4, at 193:13-15.)

252. An ADA of 79.94% equates to a student missing 36 out of 178 days of school. An ADA of 84.54% equates to a student missing about 28.5 days of school. (Tr. vol. 4, at 194-196.)

253. Mr. Thompson did not know how other schools in Philadelphia fared in terms of attendance, as compared to Olney. (Tr. vol. 4, at 198:4-10.)

254. In the FRI, PDE uses an attendance indicator measuring "the percentage of students enrolled in a school for 60 or more school days and present 90 percent or more of those school days." (Ex. JE[O] 24, at 8; Tr. vol. 1, at 170:15-171:5.) For the 2017-18 school year, PDE reported that Olney did not meet the "Regular Attendance" Performance Standard, because only 36.5% of students had such regular attendance. The Statewide average for "Regular Attendance" is 85.4%, and the statewide goal is 94.1%. Neither the "All Student" group nor any of the subgroups reported by Olney met the performance standard. (Ex. JE[O] 23, at 7.)

255. Attendance data reported by the State is on a one-year lag, so the data reported in the FRI would be for the 2016-17 school year. (Ex. JE[O] 24, at 3.) Mr. Thompson admitted that Olney "definitely can do better" when it comes to the 2017-18 attendance reported on the FRI. (Tr. vol. 4, at 199:10-15.)

256. In the SPR, the School District analyzed the attendance of all charter schools in Philadelphia using a 95% or more attendance metric. (Tr. vol. 1, at 169:11-17.) The following table shows the percent of students attending 95% or more days of school and where Olney falls based on percentile rank among other high schools receiving an SPR:

Students Attending at Least 95% of School Days		
Year	Olney	Percentile
2013-14	20%	32
2014-15	18%	25
2015-16	19%	25
2016-17	15%	22
2017-18	7%	1

(Ex. SD[O] 19, Table 11.)¹⁴

257. Olney's 1 percentile rank in the most recent year means that it had the lowest rank for 95% attendance of all high schools in Philadelphia.

258. In the 2015-16 school year, 42% of students attending School District high schools attended 95% or more of their school days, as compared to only 19% of Olney's students. Students falling into the measured subgroups at Olney (ELLs, special education, black, Hispanic/Latino, etc.) all attended school less frequently than students enrolled in School District high schools, in most cases by a rate more than 10% less than their counterparts in School District schools. During the 2015-16 school year, 31% of Olney's students attended school less than 80% of their school days. (Ex. JE[O] 30, at 7; Tr. vol. 1, at 171-174.) Mr. Thompson confirmed that this attendance data is accurate. (Tr. vol. 4, at 118:4-12.)

¹⁴ In its Renewal Application, Olney reported its own data for the percentage of students attending 95% or more of their instructional days during the initial charter term as: 14.59% in 2011-2012; 34.38% in 2012-2013; 33.83% in 2013-2014; and 31.82% in 2014-2015. (Ex. JE[O] 34, at 2.)

259. In the 2016-17 school year, 28% of students attending School District high schools attended 95% or more of their school days, whereas only 15% of Olney students did so. Students falling into the measured subgroups at Olney (ELs, special education, black, Hispanic/Latino, etc.) all attended school less frequently than students enrolled in School District high schools, between 4-34% lower depending on the subgroup. During the 2016-17 school year, 36% of Olney's students attended school less than 80% of their school days. (Ex. JE[O] 31, at 8; Tr. vol. 1, at 177-179.)

260. Moreover, 65% of Olney's students were chronically absent in the 2016-17 school year, which equates to students missing more than 10% of their instructional days. Olney's chronic absentee rates for all students and subgroups of students were higher than School District high schools and similar schools, and all subgroups measured within those comparison schools. (Ex. JE[O] 31, at 9; Tr. vol. 1, at 179:13-21.)

261. In the 2017-18 school year, 43% of the students attending School District high schools attended at least 95% of their school days, whereas only 7% of Olney's students did so. Students falling into the measured subgroups at Olney (ELs, special education, black, Hispanic/Latino, etc.) all attended school less frequently than students enrolled in School District high schools, between 25-58% lower depending on the subgroup. During the 2017-18 school year, 44% of Olney's students attended school less than 80% of their school days. (Ex. SD[O] 26, at 9.)

262. In the 2017-18 school year, 76% of Olney's students were chronically absent, which equates to students missing more than 10% of instructional days. Olney's chronic absentee rates for all students and subgroup students were more than 40 percentage points

higher than School District high schools and 36 percentage points higher than similar schools. (Ex. SD[O] 26, at 10.)

263. The Safe Schools Reports also include data for habitual truancy. This truancy information is self-reported by Olney. (Tr. vol. 2, at 87-88.)

264. The following table shows the numbers and percentages of students that Olney reported as habitually truant:

Habitual Truants			
Year	Total ¹⁵	Rate	Total by Grade
2011-12	81	5.23%	107
2012-13	219	12.67%	238
2013-14	697	40.17%	891
2014-15	0	0%	0
2015-16	19	1.08%	51
2016-17	1,460	81.61%	2,046
2017-18	1,680	84.68%	2,277

(Ex. JE[O] 74-80, at last page in each document.)

265. The truancy data Olney reported for 2014-15 and 2015-16 is probably not accurate, given the truancy data Olney reported for the other years and the other attendance-related data in the record.

266. Olney’s self-reported habitual truancy rates in 2016-17 and 2017-18 were higher than the habitual truancy rates at Olney East and Olney West from 2007-08 through 2010-11, before those schools were managed by ASPIRA, with the sole exception of Olney West in the 2009-10 school year. (Ex. Olney 175, at 4; Ex. Olney 176, at 4; Ex. Olney 177, at 4; Ex. Olney 178, at 4; Ex. Olney 184, at 4; Ex. Olney 185, at 4; Ex. Olney 186, at 4; Ex. Olney 187, at 4; Tr. vol. 2, at 69-76, 91-92.)

¹⁵ The total number of “Habitual Truants” and the “Truancy Rate” are probably even higher than the numbers reflected here, because only those students who are of compulsory attendance age are included. (*See, e.g.* Ex. SD[O] 76, at 11, note.)

267. According to Olney's data, the dropout rate at Olney has been increasing since the 2011-12 school year: 2.70% in 2011-12, 2.40% in 2012-13, 8.10% in 2013-14, 2.20% in 2014-15, 15.65% in 2015-16, 12.074% in 2016-17, and 14.919% in 2017-18. (Ex. Olney 88.)

268. Through the testimony of Mr. Thompson and Ms. Green, Olney presented evidence in its defense related to various improvements and initiatives that were undertaken in the areas of climate, safety, and programming for students. Such improvements include fewer incidents involving law enforcement (but not fewer violent incidents as per the charter targets); the introduction of the Jobs for America's Graduates ("JAG") program, a childcare center, the College Access Program ("CAP"), Personal Financial Literacy program, internships with St. Chris and ECA; security upgrades including metal detectors, cameras and increased security and school climate personnel. (Tr. vol. 4, at 91, 96-97, 101-102, 104-105, 129-134, 141-142, 155, 159-160.) With respect to these programs:

a. The JAG program went into effect in the 2017-18 school year as a pilot program and was expanded in 2018-19 to have approximately 80 participants in twelfth grade out of approximately 400 twelfth graders. (Tr. vol. 4, at 202-204; Tr. vol. 6, at 82, 197-198.)

b. The Teen Elect program is run by an outside provider (Congreso), administered by the School District and operates out of Olney's building. (Tr. vol. 4, at 206-207.)

c. Approximately 75-80 students participate in the Personal Financial Literacy Program. (Tr. vol. 4, at 209:9-14.)

d. The CAP program is not unique to Olney, as it is also run in other Philadelphia schools by the Philadelphia Education Fund and has been in operation since

Ms. Green started working with ASPIRA in 2011-12. (Tr. vol. 4, at 209-210; Tr. vol. 6, at 84.)

269. Olney operates a low incidence special education program for students who are in need of autistic support or have Down Syndrome. (Tr. vol. 4, at 137-138; Tr. vol. 6, at 82-83.) There are other schools in the School District that operate autistic support programs. (Tr. vol. 6, at 198:20-23.) Some of the students in the low incidence program are taking the PASA exam. (Tr. vol. 6, at 201:7-23.)

270. There have been improvements in Olney's climate since the 2010-11 school year, and Olney has implemented some positive programming that has benefited students and met certain expectations of the Renaissance program to demonstrate improvement in "school climate and safety" and "parent and student satisfaction." (Ex. JE[O] 2, at 38.)

271. However, Olney was obligated to meet all of the expectations set forth in its charter, including the principal goal of "dramatic gains in student achievement." (Ex. JE[O] 2, at 44.)

272. Ms. Green testified that about 75% of the students come to Olney in ninth grade performing at a fourth to fifth grade level in reading and math, which has been consistent since she started working for Olney in 2013. (Tr. vol. 4, at 235; Tr. vol. 6, at 41-43.) Because she never worked in another high school in Philadelphia, she does not know whether students also are performing below their grade level when they enter other Philadelphia high schools. (Tr. vol. 6, at 96-98:1, 169:17-20.)

273. Mr. Thompson admitted that Olney is not unique with respect to students arriving in ninth grade at such a low grade level, and described this as a "national epidemic." (Tr. vol. 4, at 157:4-10.)

274. To gauge its students' performance during the school year, Olney uses the MAP assessment, which is aligned with Pennsylvania standards. All incoming ninth grade students are given the MAP assessment upon enrollment. The MAP assessments in math and reading have been used since the 2015-16 school year, and are given to students in ninth, tenth and eleventh grades three times per year, in September, the middle of the year and the end of the year. (Tr. vol. 4, at 111:9-21, 112-113, 185:15-17, 271:9-21.)

275. The RIT scale generated from the MAP assessment differs from PVAAS and is not a measurement that PDE uses in any of the accountability systems that have been in place. (Tr. vol. 6, at 137-139.)

276. The MAP assessments for incoming students in September allow Olney to have a baseline of the students' abilities. Reports are available by individual student, grade level, and teacher. (Tr. vol. 4, at 272:1-6, 282-283.)

277. Olney produced summary MAP data for ninth grader achievement from the fall to the winter of 2018-19, which reflects an increase of 3% of students at or above the grade level norm in reading. No such information was provided for math.¹⁶ (Ex. Olney 44, at 1.) The spring 2019 assessment had not yet occurred at the time of the hearings. (Tr. vol. 6, at 140:11-21.)

278. Because the summary that Olney produced only includes students who tested in both windows, it does not reflect the total enrollment of Olney's ninth graders. (Tr. vol. 6, at 147:6-10, 149-150; Ex. Olney 44.)

¹⁶ It is reasonable to conclude that math would have been included if it had shown positive results.

279. Olney does not MAP test students in the low incidence program or ELLs with learning level 1 in reading, because those students are not required to take the Keystone Exams. (Tr. vol. 6, at 145-146, 148:6-12, 208-209.)

280. The summary that Olney produced also provided tenth grader achievement from the fall to the winter of 2018-19, showing an increase of 2% in math and an increase of 6% in reading. (Ex. Olney 44, at 2.)

281. No eleventh grade MAP data was provided.¹⁷ (Tr. vol. 6, at 150:24-151:1-4.)

282. PDE has not yet been issued data for 2018-19 Keystone Exams, so it cannot be determined whether the MAP data would forecast similar results.

283. Olney also produced MAP data for the 2017-18 school year, but it does not provide the percentage of students at or above the grade level norm, and Olney's witnesses could not provide that data. (Ex. Olney 47; Tr. vol. 6, at 154-155.) Rather, it says whether students had met or exceeded the projected growth in reading and math by ninth graders (but not other grades) in 2017-18. (Ex. Olney 47.) Such observed growth did not result in increases in achievement on the Keystone Exam proficiency results in 2017-18, however, as the percentage of proficient test takers in Algebra I and Literature fell from the prior year, and below basic scores rose from the prior year. (Ex. SD[O] 19, at 1-2; Ex. JE[O] 41-42.)

284. Olney has made several programming changes to address the low achievement of its students, but most of those programs have only been in place since the 2017-18 school year:

a. Beginning with the 2018-19 school year, Olney moved the class that triggers the Algebra I Keystone Exam to tenth grade. (Tr. vol. 4, at 115, 187, 242-243.)

¹⁷ It is reasonable to conclude that eleventh grade data would have been included if it had shown positive results.

b. Olney added double math and literacy blocks, beginning in the 2018-19 school year. (Tr. vol. 4, at 157, 158, 217-218:1-13.)

c. Olney added a once per week Foundations class for ninth graders, which began in the 2017-18 school year, then transitioned in the 2018-19 school year into a Foundations class for tenth graders who did not show academic growth in ninth grade. (*Id.* at 157-158, 218, 259.)

d. Olney began using computer-based programs of Achieve3000 literacy and Imagine Math with ninth graders in the 2017-18 and 2018-19 school years, respectively. (*Id.* at 157, 260, 302; Tr. vol. 6, at 130:8-15, 155-157.) In the 2017-18 school year, Olney used First in Math but that program “wasn’t meeting the needs of our students because First in Math is more of a fluency builder and we needed more of a whole class-type structure . . . and standards aligned additional instruction.” (Tr. vol. 6, at 130:15-21.) In the 2018-19 school year, Achieve3000 is being used with ninth graders and the 250 lowest performing students in the tenth grade. (Tr. vol. 6, at 157-158.)

e. Olney hired a data coordinator, beginning in the 2018-19 school year. (Tr. vol. 4, at 217:10-21.)

285. Mr. Thompson testified that, through the implementation of the programming described above, Olney has “seen our math scores increase.” (Tr. vol. 4, at 157-158.) However, this is not supported by the record. As measured by the 2018 ACE Report, the Keystone Exam proficiency rate for all students taking the Algebra I exam in the 2017-18 school year was only 4%, compared to the banked eleventh grade scores of 16%. (Ex. SD[O] 26, at 7.) Olney’s Algebra I proficiency percentage of 16% fell in 2017-18 to its lowest point since the Keystone Exams have been implemented. (Ex. SD[O] 19, at 1.)

286. School District schools had been using Achieve3000 for at least 7-8 years before Olney began using it in the 2016-17 school year. (Tr. vol. 6, at 158:11-24-159:1-2.) In fact, Olney got the idea to use Achieve3000 based upon its “highly successful” use in School District schools with high levels of ELLs. Before implementing Achieve3000 at Olney, Ms. Green testified that it was implemented at Pantoja and Stetson. (Tr. vol. 4, at 298:5-21, 302.)

287. School District schools had been using Imagine Math for 7-8 years before Olney began using it in the spring of 2018. (Tr. vol. 6, at 12:4-7, 160:24-161:1-12.) Olney did not introduce any 2018-19 student data from Imagine Math. (Tr. vol. 6, at 161:14-17.)

288. According to the Achieve3000 email in the record, as of February 2019, 46% of Olney’s students were not exceeding their expected growth in reading. (Ex. Olney 28, at 2; Tr. vol. 6, at 4-5.)

289. Mr. Thompson suggested that one of Olney’s greatest strength’s was “how we grow students,” with respect to Keystone Exam performance. (Tr. vol. 4, at 188:11-20.) Ms. Green also testified that students are moving out of below basic and into basic. (Tr. vol. 6, at 91-92.) Such growth is not evident, however, since as noted above, more students scored in the below basic category on the Keystone Exams in 2017-18 than in earlier years, even after multiple attempts.

290. Olney usually receives raw data and proficiency data by the end of June for students’ performance on the Keystone Exams given in May, and receives PVAAS data in July. (Tr. vol. 4, at 248-249; Tr. vol. 6, at 104-106.)

291. Mr. Thompson contended that it is unfair to evaluate Olney on the same metrics as other schools, because no other school in Philadelphia resembles Olney in terms of its demographics and size so. (Tr. vol. 4, at 166.) However, he did not know what the

demographics are in the four School District schools that he had been in or how those demographics would compare to Olney. (Tr. vol. 4, at 168-169.)

292. Ms. Green testified that Olney does not receive PSSA or PVAAS data for incoming ninth graders from the School District, which impacts Olney's educational understanding of the student's starting point. (Tr. vol. 4, at 240.) However, Ms. Green did not know if this was a problem that other schools face. (Tr. vol. 6, at 116-117.) She has never served as a principal or administrator in any other public school outside of the ASPIRA network. (Tr. vol. 6, at 97-98.) Olney is its own local education agency ("LEA"), separate from the School District, which is also its own LEA. (Tr. vol. 6, at 212:1-6.) Ms. Green did not know if PDE would allow a separate LEA to have PVAAS data for students enrolled in a different LEA. (Tr. vol. 6, at 212:12-16.)

293. Ms. Green testified that PDE training suggested that the Keystone Exams would be more rigorous exams than the eleventh grade PSSA exam had been, so there was an expectation that proficiency rates would drop when the Keystone Exams were implemented. (Tr. vol. 4, at 241-242.) However, the data does not support this conclusion, as Keystone Exam data for 2012-13 (the first year of implementation) shows increases in Literature and Biology for both Olney, the School District schools and the Charter sector, and increases in Algebra I for School District schools and relatively consistent scores (32% to 30%) for Olney. (Ex. SD[O] 19, at 1-2; Tr. vol. 6, at 109-111.)

294. Olney is subject to the same attribution rules for the Keystone Exam as all public schools, including that a student's score is not attributed to Olney if the student enrolls after October 1. (Tr. vol. 6, at 108:3-9.)

295. Just because a student receives special education services or is an ELL does not mean the student is unable to achieve proficiency. (Tr. vol. 6, at 164:22-24-165:1-5.) Olney's own witness, Yeslli Hernandez, who is a former Olney ELL student and now a teacher at Olney, testified about how she was able to overcome her English language deficits and become a successful student taking Advanced Placement and Honors English courses while at Olney back in 2010-13. (Tr. vol. 7, at 247-255.)

Feeder Patterns

296. Mr. Thompson has been Olney's principal since July 2015. (Tr. vol. 4, at 106:2-5.)

297. Mr. Thompson testified that, "I have never really concerned myself with the catchment area because we accept any student that comes to our doors from the City of Philadelphia." (Tr. vol. 4, at 106:24-107:3.)

298. Olney enrolls students who have previously attended multiple schools, including but not limited to Thurgood Marshall, Morrison, Roberto Clemente, Franklin, Olney Elementary, Pantoja, Hostos, and Stetson. (Tr. vol. 4, at 106:15-18; Tr. vol. 6, at 38-39.)

299. In 2018-19, over 100 incoming ninth graders came from Stetson, with a small number coming from Hostos and Pantoja. (Tr. vol. 6, at 165-166.) More than 50 ninth graders have been coming from Stetson in prior school years. (*Id.* at 167.)

300. Mr. Thompson testified that soon after he arrived in July 2015, the School District removed Roberto Clemente Middle School ("Clemente") from Olney's feeder school pattern without informing Olney, and if ASPIRA received information about the change, it did not inform him. (Tr. vol. 4, at 107-109, 178-179.)

301. However, Mr. Chao credibly testified that in July 2013, the School District notified ASPIRA's Chief Operating Officer, Orlando Rendon, that the change was being made. Mr. Rendon was informed that Olney could enroll students from outside the original boundary to make up for students who would have otherwise come from Clemente. The feeder change was not fully implemented until the 2014-15 school year, because the School District still permitted eighth graders at Clemente to matriculate to Olney in the 2013-14 school year. The change was made because Clemente is closer to Edison High School, and students would no longer have to cross Roosevelt Boulevard to get to Olney. (Tr. vol. 4, at 179-180; Tr. vol. 16, at 302-303, 304:11-21, 333:18-335:10.)

302. Changes in feeder schools could be to the benefit of a Renaissance charter school or to its detriment, depending on the change. (Tr. vol. 5, at 52:16-53:5.) In this case, Clemente had been a school that was on the list of low performing schools under the initial year of the Renaissance program, and had been converted into a Promise Academy under the Renaissance program. (Ex. JE[S] 8; Tr. vol. 5, at 128:9-129:4.)

303. According to Mr. Thompson, once the feeder pattern changed, during the 2015-16 school year, Olney started "more aggressively" recruiting and marketing students from around the City of Philadelphia. That marketing campaign resulted in an increase of about 500 additional students between 2015-16 and 2017-18. (Tr. vol. 4, at 182.) In the 2018-19 school year, approximately 20% of Olney's population is from outside its original catchment area. (Tr. vol. 4, at 184:6-12.)

304. The enrollment of students at Olney from outside the catchment area began before Mr. Thompson arrived. In prior years, more than 20% of students enrolled at Olney came from outside its catchment area or a designated Olney feeder school (the "Attendance

Zone”). According to the 2015-16 Renewal Recommendation Report, the following percentages of Olney’s students came from outside the Attendance Zone: 60.7% in 2013-14; 58.9% in 2014-15; and 58.8% in 2015-16. (Ex. JE[O] 17, at 5.)

305. Many witnesses referenced Olney as a neighborhood school, However, Olney is not a true neighborhood school, because many of its students live outside the catchment area or attendance zone.

Dr. Schuh’s Testimony

306. Dr. Schuh testified at the hearings as an expert in K-12 educational assessments and standardized tests in Pennsylvania, K-12 public education accountability, and assessment systems in Pennsylvania. (Tr. vol. 9, at 20.)

307. Dr. Schuh does not have any degrees in statistics. (Tr. vol. 9, at 9:1-7.)

308. Dr. Schuh has never testified on behalf of a school district in a nonrenewal or revocation proceeding, only on behalf of charter schools in such cases. (Tr. vol. 9, at 11:17-22, 31-32.)

309. Dr. Schuh helped ASPIRA prepare for the Renaissance Initiative qualification process for ASPIRA. (Tr. vol. 9, at 43:11-24.) As part of that process, he helped ASPIRA look at data for Hostos and Pantoja, and helped ASPIRA review the academic data and demographic information for some of the schools that were likely to be ones that may want to choose ASPIRA, such as Stetson and Roberto Clemente “to see what the needs were at places like Stetson.” (Tr. vol. 9, at 43:17-45:21.)

310. Dr. Schuh admitted that, based upon his review and re-calculations of data found in the SPR, the SPR elements are being calculated correctly. (Tr. vol. 9, at 38:4-11.)

311. Dr. Schuh made a number of statements that are not supported by the evidence or the law in this case: (a) that the SPP stopped being used altogether in 2017-18, even though it continues to be calculated (Tr. vol. 9, at 120:2-6); (b) that the State did not calculate AMOs in English and math in 2013-14 (Tr. vol. 9, at 233:17-234:4), even though those are clearly set forth in the RFRM report; (c) that when the School District calculates graduation rates, they are attributed back to the first school that a student enrolled in even if the student transferred out (Tr. vol. 9, at 246:8-247:1; Tr. vol. 15, at 158:17-161:17; Ex. Olney 79-81, at 31; Ex. Stetson 65-67, at 31); (d) that, under the School District's graduation rate methodology, students have to graduate by the end of August to be counted (Tr. vol. 9, at 249:17-21; 164:1-12; Ex. Olney 79-81, at 31; Ex. Stetson 65-67, at 31); (e) that the School District's SPR compared Stetson to K-8 schools (Tr. vol. 9, at 209:8-210:5; Tr. vol. 15, at 196:14-197:14); and (f) that the School District stopped calculating city rank and peer rank for the SPR in 2016-17 and 2017-18, when that data is publicly available on the School District's website (Tr. vol. 15, at 191:24-195:6; Ex. SD[O] 13).

312. Dr. Schuh did not address 2017-18 data for Olney or Stetson in the charts that he prepared for his testimony. (Tr. vol. 14, at 88:24-89:22.) When asked about whether Olney had filed a School Improvement plan for 2017-18, he responded "I really wasn't looking at 17-18 school year that much, so I can't tell you." (Tr. vol. 15, at 171:10-13.)

313. Even though he had been charged with reviewing Olney's performance as an "expert" on Pennsylvania academic assessment, Dr. Schuh did not take into consideration the decline in State assessment scores since ASPIRA began managing Olney, other than to suggest that demographics accounted for the declines. Although he stated that it was "definitely worth doing," Dr. Schuh did not perform a regression analysis or other statistical

model to account for the differences in demographics at Stetson or Olney compared to other School District schools or charter schools and control for them. (Tr. vol. 13, at 234:9-239:17.) His opinion that such differences impacted Stetson and Olney's scores was not supported by any quantifiable or statistical evidence.

314. Dr. Schuh admitted on cross-examination that the language in the Application¹⁸ stating that the "opportunity and achievement gap is closed for all students" was intended to apply to all students, including subgroups. (Tr. vol. 14, at 38:24-39:6.)

315. All of the changes to the Statewide assessment system and academic standards addressed in Dr. Schuh's testimony and report applied equally to all public schools, not just Olney. (See, e.g. Tr. vol. 14, at 73:14-19, 75:10-16; 4/1/19 N.T. 207:21-208:9, 211:6-21.) Thus, Olney would not have been the only school affected by those changes.

316. Dr. Schuh contends that student achievement on the Keystone Exam is impacted by the fact that the exam is not a graduation requirement, but he is not aware of any studies or surveys that have been conducted on that topic. His sole basis for the assertion was discussions that he has had with "probably 14 charter school CEOs" and 6-7 total students each at Maritime Charter School and Boys Latin Charter School. He admitted that he has no evidence or data that would support a link between drops in scores and the Legislature's decision to change the Keystone Exam graduation requirement. (Tr. vol. 14, at 90:18-93:4.)

317. Similarly, he opined that the new PSSA exam, realigned in 2014-15 to PA Core standards for ELA and math, is more challenging to ELL students or special education students. No research studies have supported that opinion. He also did not present any charts or data showing what the drop in scores had been for ELL or special education students

¹⁸ The Application language in this regard was the same for both the Olney and Stetson. (Ex. JE[O] 2, at 131; Ex. JE[S] 2, at 365.)

educated at Olney or Stetson, to see if there was any correlation or performance trend that could be identified. He has not been involved in any curriculum alignment at Olney or Stetson, so he does not know what they were doing to ensure alignment with the new PA Core standards in any grade level, or for programming for ELL students or special education students. (Tr. vol. 15, at 208:21-211:5, 211:22-212-6.)

318. Dr. Schuh also suggested that Olney's graduation percentages may be affected by students with IEPs who are given more than four years to graduate. This assertion is not factually accurate. Not all special education students are permitted to attend school until they turn 21, because that is based on an individualized determination by the IEP team. Dr. Schuh had no specific data to know if any students at Olney did not graduate within four years because the IEP team had determined that the students could remain in school until they were 21. (Tr. vol. 15, at 168:22-169:24.)

319. Dr. Schuh also expressed his personal belief that special admission schools, or the students educated in those schools, should not be included in peer schools. His initial testimony improperly lumped together special admission schools, which may have criteria on the books, and citywide admission schools that only have an application process. That incorrect testimony was clarified on cross-examination. (Tr. vol. 15, at 187:18-191:23.) He also admitted that not all students at special admission schools score proficient or advanced on the PSSA or Keystone Exams. Special admission schools also educate special education students and students who are economically disadvantaged. (Tr. vol. 14, at 59:16-60:1, 64:4-19.) He did not, however, recalculate the School District's Keystone Exam proficiency percentages to remove the scores of any students attending special admission schools to even know how the removal of those scores would affect his opinion.

320. Dr. Schuh positively compared Stetson to Elkin, an elementary school that serves as a feeder school into Stetson, because of the two school's similar demographics. However, in 2016-17, Elkin students had a proficiency rate of 24% in fourth grade science, compared to Stetson's proficiency rate of 3.9% in eighth grade science, after students had been enrolled at Stetson for almost four years (unless they had transferred in from somewhere else). (Tr. vol. 15, at 212:8-214:9.)

321. Dr. Schuh testified that the School District had frequently changed the metrics used in the SPR, as well as the floors and ceilings within the various metrics, suggesting that SPRs could not be compared from year to year because the reports did not contain the same information. (Tr. vol. 9, at 60-61, 64:20-24.) While there were some changes from 2015-16 to 2016-17, there were no changes from 2016-17 to 2017-18. (Tr. vol. 9, at 62-64; Tr. vol. 14, at 52:8-53:2; Ex. Olney 82, at 20-23; Ex. Olney 83, at 23-26; Ex. Olney 84, at 19-20; Ex. Olney 85, at 19-20.) Some of the changes were the result of State-level or national-level assessments changing, such as the removal of the PSSA writing assessment and changes to the ACCESS exam. (Tr. vol. 14, at 53:4-54:11.) Dr. Schuh did not offer any evidence related to how Olney's SPR score would have changed if the metrics had stayed exactly the same from year to year. Further, each school receiving an SPR is evaluated based upon the same metrics as other schools in the same year, so the within-year metrics are being equally applied to all schools.

322. Dr. Schuh also contended that it is unfair to establish peer groups after the school year ends, because a school does not know which other schools it will be measured against. (Tr. vol. 9, at 78:9-14.) However, it is not clear why this would matter, given that each school should be trying its best no matter which other schools it might ultimately be

compared to, and no comparison can be made anyway until the year is completed and there are results to compare. Because peer groups are comprised of schools that share demographic characteristics (Tr. vol. 9, at 80:21-81:11), the School District would not know the specific demographics of the population at the various schools from year-to-year until the data is collected at the end of the school year. Dr. Schuh did not suggest an alternate way to calculate such peer groups.

323. Whether a special admission school gets into a school's peer group or similar schools group is simply a function of demographics. (Tr. vol. 9, at 91:24-92:22.)

324. In any event, the only comparison groups that are being considered in this proceeding are School District schools as a whole and charter schools as a whole. The SPR's peer-group comparisons are not relied upon in these findings and will not be relied upon by the BOE when deciding whether or not to renew Olney's Charter.

325. None of Dr. Schuh's testimony and evaluation addressed the specific requirements found in the Renaissance Policy, RFP Nos. 260 and 286, the Applications submitted for the Charter Schools, or the charters they were issued. He did not calculate any median scores under any accountability system for any school year or any subject area and compare those to Olney or Stetson's data. Nor did he dispute the information provided by the School District in this regard.

326. As noted previously, Dr. Schuh also opined that Stetson and especially Olney, should have been compared only to "neighborhood schools" and not any selective admission schools. (Tr. vol. 9, at 194:16-195:12.) However, he did not take into account that: (a) citywide admission schools are also included in the School District group in addition to neighborhood schools and selective admission schools; (b) the Renaissance initiative did not

limit comparisons with only neighborhood schools; and (c) the Charter Schools are not true neighborhood schools, because they enroll students from outside their catchment areas or attendance zones.

327. Dr. Schuh opined that the scores of students coming into fifth grade at Stetson might score lower due to the transition to a new school in fifth grade, as compared to the scores of fifth graders in a K-8 school. When asked if he had performed any analysis of Stetson's scores versus fifth grade scores in K-8, he admitted that he had not done so and did not have any data to support his conclusion. (Tr. vol. 13, at 210:18-213:12.)

328. Dr. Schuh also testified about his personal disagreement with the State's PVAAS system and his opinion regarding purported limitations of the system. However, this hearing is pursuant to the Charter School Law, which requires use of the statewide system in place, not some other system that Dr. Schuh would prefer. PVAAS is the approved system used in Pennsylvania to ascertain student growth. It has been part of the SPP system and continues to be part of the FRI. (Tr. vol. 14, at 76:15-78:14, 80:2-5.)

329. Dr. Schuh did not dispute the accuracy of the School District's summary of Olney's data. (Ex. SD[O] 19.)

330. Many of the articles relied upon by Dr. Schuh were dated, addressed data from distant school years including prior to SPP and prior to NCLB, and/or did not address accountability systems in Pennsylvania. The Fuller report mentioned by Dr. Schuh did not indicate if it reflected data from charter schools, and did not contain data about ELL students, as initially suggested by Dr. Schuh. (Tr. vol. 14, at 80:6-88:23.)

331. Dr. Schuh had multiple conversations with Dr. Carolyn Dumaresq, then Secretary of Education with PDE, around the time of the 2013-14 school year and has no

reason to disbelieve that she made the statement that a school having an SPP score of 70 or above is moving in the right direction. For those schools that were identified as Priority schools based on the 2012-13 data, including Olney, the State hired academic recovery liaisons to assess the schools' weaknesses and suggest strategies for improvement. Dr. Schuh has no reason to believe that Olney did not have access to those supports as early as the 2013-14 school year. In 2013-14, several schools with high poverty rates had SPP scores of 70 or above. (Tr. vol. 15, at 200:18-203:4.)

332. Dr. Schuh admitted that all Chapter 4 standards apply to Olney and Stetson, in addition to the Renaissance standards. (Tr. vol. 15, at 214:10-215:10.)

333. Counsel for Olney directed Dr. Schuh to a PowerPoint presentation prepared by the School District regarding SPI. The PowerPoint presentation reflects the SPI including a Similar Schools Rank based on demographic factors in addition to an Overall Performance Rank. (Ex. Olney 282; Ex. Stetson 255; Tr. vol. 15, at 221:17-223:22.) The Renaissance Initiative, however, does not mention a Renaissance charter school being compared to similar schools for purposes of evaluation and accountability. Rather, the Renaissance documents and the charter clearly contain performance indicators tied to the Overall Rank.

334. Dr. Schuh admitted that all of the schools identified as Renaissance schools had higher populations of low income and special education students and some had higher percentages of ELLs, agreeing that those characteristics were "indicative of Renaissance Charter Schools." None of the Renaissance charter schools were exempted from the accountability measures simply because they exhibited those characteristics, and they were identified knowing that they had those characteristics, even at a time when studies were

showing that there was a widening achievement gap between the rich and the poor. (Tr. vol. 15, at 250:21-252:8.)

Violation of Applicable Laws

English Language Learners

335. PDE's Basic Education Circular ("BEC on ELLs") entitled "Educating Students with Limited English Proficiency and English Language Learners" was in place from July 1, 2001 through July 1, 2018, and describes programmatic components related to education of ELLs. (Ex. JE[O] 35; 3/12/19 198-200.)

336. According to the BEC on ELLs, planned instruction in an English as a Second Language program must include daily instruction during the school day supporting the program model chosen by the local educational agency, with the number of hours dependent on the level of the student. (Ex. JE[O] 35, at 3.)

337. "The State ELP assessment must be administered annually to measure progress and/or attainment of the student's English language proficiency for each language domain" (Ex. JE[O] 35, at 4.)

338. In Pennsylvania, the State's English Language Proficiency assessment is the ACCESS exam. (Tr. vol. 1, at 198:2-8, 200:18-21.)

339. The CSO has monitored charter schools' compliance with the ACCESS testing requirement through the ACE Reports. Each charter school completes a data packet during the summer wherein the charter school identifies all of the ELLs who were educated at the school in the previous year, and the State sends the School District the results for which students took the ACCESS exam. The CSO reviews the results for which students took the ACCESS

exam and then sends the results to the charter school to confirm the accuracy of the results. (Tr. vol. 1, at 200-201.)

340. In the 2015-16 school year, 5 ELL students who were enrolled at Olney from October 1 to June 1 did not take the ACCESS exam during the testing window established by PDE. (Ex. SD[O] 6; Tr. vol. 1, at 202-205.)

341. On July 5, 2017, the CSO issued a Notice of Deficiency to Olney addressing three issues: (1) the failure to have 100% special education certified teachers; (2) Olney's enrollment materials being out of compliance; and (3) the failure to ensure that all ELLs are annually assessed with the ACCESS exam. (Ex. JE[O] 50.)

342. In the 2016-17 school year, 44 ELL students, or 8% of all ELL students, who were enrolled at Olney from October 1-June 1 did not take the ACCESS Exam during the testing window established by PDE. The Charter School did not dispute these results. (Ex. SD[O] 3-4; Ex. JE[O] 31, at 12; Tr. vol. 1, at 205-206.)

343. On July 1, 2017, PDE issued a new BEC on ELLs called "Educating English Learners (ELs)" ("Revised BEC on ELLs"). The Revised BEC on ELLs continues to require ELLs to be annually assessed using the "ACCESS for ELLS" exam. It further states: "There is no provision that allows parents to opt their children out of annual ELP testing." (Ex. SD[O] 16, at 5; Tr. vol. 1, at 208.)

344. In the 2017-18 school year, 13 EL students, or 3% of all ELL students, enrolled at Olney from October 1-June 1 did not take the ACCESS exam during the testing window established by PDE. (Ex. SD[O] 15; Ex. SD[O] 26, at 13; Tr. vol. 1, at 209-211.)

Student Discipline

345. According to Olney's representations in its Renewal Application, seven students were expelled in the 2012-13 school year, three students were expelled in the 2013-14 school year, and two students were expelled in the 2014-15 school year. (Ex. JE[O] 34, at 2.) However, according to the meeting minutes provided, Olney's Charter Board only took action on the following expulsions during those school years: five expulsions during 2012-13 (all approved on January 30, 2013); one expulsion during the 2013-14 school year (approved on April 8, 2014); and zero expulsions during the 2014-15 school year. (Ex. JE[O] 3.)

346. Olney did not produce any evidence disputing that its Charter Board did not act on all expulsions identified in the renewal application for the years in question.

347. Olney operates the Success Academy, which is a program for students who have numerous disciplinary infractions. (Tr. vol. 4, at 143-146.) The Success Academy is an in-school behavior placement where students are removed from the regular population of students and placed into a specific program. (Tr. vol. 2, at 148:3-12.)

348. The 2015-16 Handbook for students does not address the Success Academy or the procedures that would be used to place students in the Success Academy. (Ex. JE[O] 68; Tr. vol. 4, at 212:13-24.)

349. According to Mr. Thompson, Success Academy is almost like a suspension and "there definitely should be additional information for the program in the student handbook, but realistically it is like a consequence. It's serving as a consequence. It is something that we use to help a student get back on track." (Tr. vol. 4, at 213:6-17.)

350. He admitted that parents "absolutely" should have been informed in the handbook of the procedures and requirements for placement in the Success Academy. (Tr. vol. 4, at 214-215.)

351. Mr. Thompson did not know if there is a reference to the Success Academy in more recent versions of the Student Handbook. (Tr. vol. 4, at 224:13-20.) Olney’s counsel showed a CSO witness the 2018 Student Handbook and Code of Conduct approved by the Charter Board on June 29, 2018 (for the 2018-19 school year), which does provide parents and students with notice of the disciplinary school consequence and hearing requirements. (Ex. Olney 13, at 92; Tr. vol. 2, at 232:12-235:4.)

Highly Qualified Teachers

352. Highly qualified teachers (“HQT”) are defined in the PDE’s RFRM reports as teachers who: (a) hold full certification; (b) have at least a bachelor’s degree; (c) have completed a content area major; (d) passed a content area test; and (e) have completed teacher education coursework. (*See, e.g.* Ex. JE[O] 11, at 12; Tr. vol. 1, at 196.)

353. While NCLB was in place, PDE reported the percentage of courses taught by non-HQT in the RFRM reports. (Ex. JE[O] 11-14, at the last page of each document.)

354. On the page in the RFRM where PDE reported the professional qualifications of teachers, each RFRM report states as follows: “Federal regulations require that all public school teachers in core academic subjects be Highly Qualified. Teachers are generally required to be fully certified and to demonstrate their knowledge.” (*Id.*)

355. The percentages of courses at Olney taught by HQT during its charter term were 91% in 2013-14; 95.4% in 2014-15; 95.8% in 2015-16; and 96.8 in 2016-17. (Ex. JE[O] 11-14, at the last page of each document; Tr. vol. 1, at 196-197.)

356. The HQT requirement was removed from the ESSA. (Tr. vol. 2, at 53:19-22.)

357. In addition to the RFRM reports, Olney itself reported its percentages of HQT as 88.40% in 2011-12, 77.50% in 2012-13, 90.80% in 2013-14, 95.40% in 2014-15, and

95.80% in 2015-16. (Ex. JE[O] 34, at 2; Ex. Olney 88.) These percentages are consistent with the data PDE reported in the RFRM reports.

Certification of Charter School Staff

358. Olney self-reported the number of special education staff who are appropriately certified in the Annual Reports that must be filed with the State each year by August 1. The Annual Report template contains a staffing chart that must be completed, and the staffing chart includes a line to report special education staff and their certification status. (Ex. JE[O] 56-58, at 4; Ex. SD[O] 14, at 4; Ex. Olney 166, at 4.)

359. The numbers of appropriately certified special education teachers at Olney were 27 of 33 in 2013-14; 34 of 35 in 2014-15; 28 of 30 in 2015-16; 27 of 34 in 2016-17; and 26 of 41 in 2017-18. (Ex. JE[O] 56-58, at 4; Ex. SD[O] 14, at 4; Ex. Olney 166, at 4; Tr. vol. 2, at 125-126, 131.)

360. Olney did not offer any evidence to dispute this data.

Student Enrollment and Admission Practices

361. PDE's Basic Education Circular entitled "Enrollment of Students" ("BEC on Enrollment") addresses admission and enrollment requirements for public schools. The BEC requires five categories of information to be submitted "whenever a child of school age is presented for enrollment by a parent(s), school district resident, or any other person having charge or care of the child." The five categories of information are: (a) proof of the child's age; (b) immunizations required by law; (c) proof of residency; (d) parent registration statement; and (e) home language survey. (Ex. JE[O] 36, at 1-2.) The BEC on Enrollment further states: "For both enrollment and also for residency determinations, a school district or

charter school may not request or require any of the following: a social security number”
(*Id.* at 3.)

362. An enrollment packet refers to the set of materials given to students and their families once they have been accepted in order to confirm enrollment. The CSO asks charter schools to submit all such materials given to accepted families. (Tr. vol. 2, at 133:17-134:3.)

363. Olney’s enrollment packet for the 2015-16 school year “requires” the following documents in order for a student to be registered: transcripts, special education records, physical examination/child health assessment, and dental examination or appointment card. (Ex. JE[O] 47, at 1.) The enrollment packet further states:

I understand that admission is tentative pending the receipt of all required documents and a placement test. I am fully aware that enrollment is on a first come, first-serve basis. Failure to submit a complete registration packet and **having my child tested** might result in having to find another school.

(*Id.* at 1 (emphasis in original).)

364. The 2015-16 enrollment packet also required an Application for Admission to be filled out by parents, which included a request for social security number and the race or ethnicity of the student. (Ex. JE[O] 47, at 2.)

365. For the 2016-17 school year, Olney’s enrollment packet changed. It no longer requested the five documents required by the BEC. It also asked for the prospective student’s citizenship, race/ethnicity and social security number. (Ex. JE[O] 48, at 1.)

366. These matters were addressed with Olney and corrected after the 2016-17 school year. (Tr. vol. 2, at 142)

Sunshine Act

367. Olney's Renewal Application contains a list of members of its Charter Board between 2011-12 and 2015-16. The list does not include any parent representatives. (Ex. SD[O] 34, at 48.)

368. Simultaneous board meetings are held for Olney, Stetson and the other ASPIRA-managed charter schools. (Tr. vol. 4, at 46:4-8.)

369. The same individuals serve on the Charter Board for each ASPIRA-managed charter school, with the exception of the parent representative from each Charter School. (Tr. vol. 2, at 164:10-15.)

370. From the 2011-12 school year until the April 20, 2015 Charter Board meeting, with one exception, the Charter Board meeting minutes do not reflect the Charter Board ever acting to appoint any trustee to the Charter Board or to elect officers of the Charter Board. The sole exception is the June 11, 2013 meeting, when the Charter Board accepted Aracely Rosales' resignation and voted to appoint Fred Ramirez as the Board Chair. (Ex. JE[S] 39, at 25.) In the Charter Board meeting minutes within these time frames, different names of parent board members and ASPIRA-appointed board members often appear in the list of attendees without any votes being taken to appoint new board members or to act on the resignations or vacancies. Further, there are changes reflected periodically in the list of officers at the top of the board meeting minutes, but the minutes themselves (except for the one noted above) do not reflect any votes on the election of officers. (Ex. JE[O] 3, at 1-103; Ex. JE[S] 38-41.)

371. On April 20, 2015, for the first time, the meeting minutes reflect an action item for Jennifer Albandoz to be appointed to fill a vacancy on the Charter Boards of Olney, Stetson and Hostos (but not the other two charter schools). Those minutes also note that there

would be board elections after the annual retreat in June, because “[i]n June, everyone is up for renewal.” (Ex. JE[O] 3, at 108.)

372. The Charter Board has not used executive sessions in an appropriate way. Between September 28, 2011 and May 16, 2016, executive sessions were held on at least 15 occasions when no stated purpose was provided. (Ex. JE[O] 3; Ex. JE[O] 65, at 1-31; Ex. JE[S] 38-42.) On other occasions, executive sessions were held for announced reasons that are not proper, such as discussion of: an audit report (May 30, 2012), academic conditions and governance (May 24, 2016), board housekeeping matters (January 30, 2017), and board elections (May 15, 2017). (Ex. JE[O] 3, 65 and 66; Ex. JE[S] 38, 42, 43.) Moreover, where the purposes of executive sessions were announced, the announcements did not disclose any action or discussion of lending transactions.

373. Because the boards for all of the ASPIRA-managed charter schools met simultaneously and the minutes do not reflect the opening and closing of meetings, there are many occasions when the minutes do not accurately or sufficiently reflect what action is being taken for which school. For example, on September 15, 2014, the Charter Board voted on contracts with administrators but the minutes do not include the names of the administrators whose contracts were considered or identify the schools for which the administrators worked. Because there are no roll call votes, the minutes do not indicate who voted on the matter and the Charter Board’s chair refused to identify what school was at issue in the vote when asked by a member of the public. (Ex. JE[O] 3, at 76-77; Ex. JE[S] 41, at 18-19.)

374. From their inception until the February 25, 2019 board meeting, the Charter Board meeting minutes do not include roll call votes on any items. Because the meetings for several charter schools were being held simultaneously, the lack of roll call votes or any other

specification of votes prevents identification of which members voted on which matters for which entity. (Ex. JE[O] 3, 65-67; Ex. SD[O] 32; Ex. Olney 295; Ex. JE[S] 38-44; Ex. SD[S] 25; Ex. Stetson 272.)

375. Ms. Hentz was the only Charter Board member called to testify at the hearings.

376. Ms. Hentz is the grandmother of two Olney students and the parent representative for Olney's Charter Board. According to her understanding and belief, she "is sure" that she has served on Olney's Charter Board only since June of 2017. (Tr. vol. 4, at 19:6-24, 30:22-31:3.)

377. According to the Charter Board minutes, Ms. Hentz has been serving as the identified "Parent on the Board for Olney" since the meeting of May 24, 2016. (Ex. JE[O] 65, at 36; Ex. JE[S] 42, at 36.) As early as the May 24, 2016 meeting, Ms. Hentz is identified as making action item motions related to Olney. (*Id.* at 37.) However, during cross-examination, Ms. Hentz was adamant that prior to June 2017, she was not an elected parent board member for the Charter Board. She did not know the name of the person who was the elected parent board member for Olney. (Tr. vol. 4, at 35:1-12, 42:21-43:5.) Ms. Hentz testified that until June 2017, her role was informational only, to take information to the PTA. She could not remember voting on any matter, "because I didn't take the interest until I was elected to the board to vote." (Tr. vol. 4, at 36:11-37:13, 43:2-5.) When asked for further clarification of her role from the point she appears in the minutes until June 2017, she replied: "I had a right to make a motion for my school, for the school, because I was taking the place of somebody else, but that's all, you know. And, in fact, I was told that I was to—I was there for informational purposes because I was taking somebody else's place." (Tr. vol. 4, at 64:12-19.)

378. At the June 2017 meeting, Ms. Hentz recalls that “people were nominated and people were elected.” She could not remember if that occurred in public. The only meeting held in June 2017 for which minutes were supplied was on June 9, 2017. When shown those minutes, Ms. Hentz agreed that there is no reference in them to her being appointed to the Charter Board. (Ex. JE[O] 66, at 49-58; Ex. JE[S] 43, at 49-58; Tr. vol. 4, at 37:23-40:15.) (Ex. JE[O] 66; Ex. JE[S] 43.)

379. Ms. Hentz testified that the full board votes on the election of parent representatives to the Charter Board. (Tr. vol. 4, at 58:22-59:1.) However, the Charter Board minutes in the record do not reflect any votes on the appointment to the Charter Board of any parent representative for any of the ASPIRA-managed charter schools. The minutes simply reflect various parent representatives in the attendees information, and those names have changed, at time mid-year, without any elections reflected in the minutes. (Ex. JE[O] 3, 65-67; Ex. JE[S] 38-44.)

380. Ms. Hentz testified that since June 2017, when began voting on Olney matters, she has not voted on action items for the other ASPIRA-managed charter schools. (Tr. vol. 4, at 51:7-15.)

381. The Charter Board has an Executive Committee, which does not include Ms. Hentz. She does not know who serves on the Executive Committee, has never seen minutes of an Executive Committee meeting, and does not know when the Executive Committee meets. (Tr. vol. 4, at 56:22-58:9.)

382. Carmen Paris was elected to be Vice Chair of the Charter Board after the Vice Chair was created through a bylaw amendment on July 1, 2016. However, after Carmen Paris stopped attending Charter Board meetings as of the October 16, 2017 meeting, no one has

been appointed to fill the Vice Chair vacancy on the Charter Board. (Ex. JE[O] 66-67; Ex. JE[S] 43-44.)

383. Since April 23, 2018, only four board members are on Olney's Charter Board: Ms. Albandoz, Ms. Ortiz, Ms. Grajales and Ms. Hentz. (Ex. JE[O] 67, at 40-60; Ex. SD[O] 32.) Beginning with the February 25, 2019 minutes, an individual named Shelley Leaphart-Williams is listed in the attendee list as a Charter Board member, but none of the minutes since April 23, 2018 reflect any vote by the Charter Board to elect Ms. Leaphart-Williams as a member of the Charter Board. (Ex. Olney 295, at 65.) A motion "to approve" Ms. Leaphart-Williams as a community board member for Olney is mentioned in the January 28, 2019 minutes, but the minutes do not reflect an actual motion, second or vote occurring to approve Ms. Leaphart-Williams as a board member. (Ex. SD[O] 32, at 34.)

384. Since August 20, 2018, when Soledad Alfaro no longer appears on the Charter Board minutes, Stetson only has 4 board members: Ms. Albandoz, Ms. Ortiz, Ms. Grajales and Ms. Morales. (Ex. SD[O] 32, at 10-39; Ex. Stetson 272, at 66-70, 109-118.)

Statements of Financial Interest

385. Public officials must file a Statement of Financial Interest ("SOFI") by May 1 of each year for the previous calendar year.

386. Accordingly, Olney's charter provides as follows:

Public Official and Employee Ethics Act. The Charter School acknowledges that all Charter School trustees and administrators must comply with the Public Official and Employee Ethics Act and that all Charter School trustees and administrators shall submit their completed Statement of Financial Interests forms by May 1st to the Charter School, with copies to the School District.

(Ex. JE[O] 2, at 27-28 § XVIII.F.)

387. Thus, Olney was obligated to ensure that its board members filed their SOFIs on time, and was obligated to provide copies to the School District when they did.

388. The CSO reviewed Olney's compliance with the SOFI requirements during the Charter term through 2016. (Tr. vol. 2, at 202-206.)

389. Olney submitted SOFIs to the CSO for 2011 through 2016. (Olney SD 18.)

390. Comparing the SOFIs submitted to the CSO for 2011 through 2016 with the minutes identifying the members of the Charter Board for 2011-12 through 2015-16 shows that most of the Charter Board members did not submit, or timely submit, SOFIs as required:

a. James Eisenhower served on the Charter Board in 2017, but did not file a SOFI for that year.

b. Arcely Rosales served on the Charter Board in 2011 and 2012, but did not file a SOFI for either of those years.

c. Beth McGettigan served on the Charter Board in 2012, but did not file a SOFI for that year.

d. Carmen Paris served on the Charter Board from 2013 through 2017, but did not file a SOFI for 2014 and 2017.

e. Carmen W. Nieves served on the Charter Board in 2011 and 2012, but did not file a SOFI for either of those years.

f. Frederick Ramirez served on the Charter Board from 2012 through 2017, but did not file a SOFI for 2012, 2014, 2016 and 2017, and his SOFI for 2013 was untimely.

g. Jacqueline Perez served on the Charter Board in 2015 and 2016, but did not file a SOFI for either of those years.

h. Julio Largo served on the Charter Board from 2012 through 2014, but did not file a SOFI for any of those years..

i. Lillian English-Hernandez served on the Charter Board in 2016 and 2017, but did not file a SOFI for either of those years.

j. Lisette Gonzalez served on the Board in 2011, 2013 and 2014, but did not file a SOFI for 2013 and 2014.

k. Natasha Harris served on the Charter Board from 2013 through 2015, but did not file a SOFI for any of those years.

l. Orlando Quevedo served on the Charter Board from 2011 through 2016, but did not file a SOFI for 2012, 2013, 2014, 2015 and 2016.

m. Tamara Newton served on the Charter Board in 2011 and 2012, but did not file a SOFI for either of those years.

(Ex. JE[O] 3, 65.)

391. Olney did not provide any of those missing SOFIs at the hearings.

392. Olney did not take any steps to remove any Charter Board member who did not file a timely SOFI.

Role of ASPIRA

393. ASPIRA “is a charter management organization and community-based organization focused on youth development and education of the youth in the neighborhood.” (Tr. vol. 5, at 270:15-18.) ASPIRA operates five charter schools, including one cyber charter school. All of the charter schools are located in North Philadelphia, and share the same mission and focus on North Philadelphia. (Tr. vol. 5, at 270:19-271:5; Tr. vol. 6, at 275:13-21.)

394. ASPIRA is the management company for Olney, Stetson, Pantoja, Hostos and ASPIRA Bilingual Cyber Charter School (“Cyber”), all of which are considered related entities to each other. Other related entities to ASPIRA and the charter schools are ASPIRA Community Enterprises, Inc., and ACE/Dougherty, according to the independent auditors. (Tr. vol. 4, at 17:3-12; Ex. JE[O] 4, at 19; Ex. JE[S] 7, at 24.)

395. ASPIRA serves as Olney’s management company pursuant to various versions of a Master Service Level Agreement (“MSLA”). The first MSLA entered into between Olney and ASPIRA (“2011 MSLA”) has an effective date of July 1, 2011, but was not signed by Olney until November 31, 2011. (Ex. JE[O] 44.) The 2011 MSLA was signed on behalf of Olney by its board chairperson and the chief academic officer, Evelyn Nunez, who was an ASPIRA employee. (*Id.* at 12; Tr. vol. 6, at 273:7-10.)

396. The 2011 MSLA was never approved or even considered by the Charter Board at a public meeting. (See, Ex. JE[O] 3.)

397. The 2011 MSLA contains the following pertinent language:

3. PERIOD OF AGREEMENT. This Agreement shall become effective on the Effective Date referenced above and shall remain in effect subject to annual ratification by the OLNEY Board of Trustees or until terminated in accordance with the terms and conditions stated herein (“Term”).

4. COMPENSATION AND TERMS OF PAYMENT.

4.1 Payment of Services. OLNEY shall pay ASPIRA for Program Services in accordance with the applicable Service Schedule hereunder. Unless otherwise agreed by the Parties in a particular Service Schedule, the following shall apply:

4.2 Payment Schedule. ASPIRA shall invoice OLNEY monthly for Services performed in accordance with the applicable Service Schedule. Each monthly invoice shall include an itemized breakout by Service Schedule and will include a summary report of tasks performed, additional information may be requested by OLNEY management staff for review or if required for audit purposes. Invoiced amounts shall be paid upon OLNEY Management approval or within forty-five (45) days of invoice date. . . .

14. GENERAL.

14.1. Independent Contractors. For purposes of this Agreement, ASPIRA and OLNEY are independent contractors. Neither Party is granted any right or authority to assume or create any obligation or responsibility, express or implied, on behalf of, or in the name of the other Party, or to bind the other Party in any matter whatsoever. Each Party is solely responsible to select, engage and discharge its employees and other personnel, to determine and pay their compensation, taxes and benefits, and otherwise to control their services and determine all matters. Nothing contained within this Agreement shall impose an obligation of exclusivity on one Party by the other.

(Ex. JE[O] 44, at 3, 10.)

398. Under the Notice provision in the 2011 MSLA, notices to Olney are required to be sent to the attention of the Chief Academic Officer (“CAO”) with a copies to the Chair of the Charter Board and School Principal/Director. (Ex. JE[O] 44, at 11.) No counsel for Olney is listed in the 2011 MSLA.

399. The management fee specified in the 2011 MSLA is “up to \$3,500,000 of specifically identifiable costs plus 7% (\$245,000) thereof for other costs.” (Ex. JE[O] 44, at 14.)

400. On January 18, 2013, Olney and ASPIRA executed another MSLA with an effective date of July 1, 2012 (“2012 MSLA”). (Ex. JE[O] 45.) The 2012 MSLA, which is also signed by the chairperson of the Charter Board and the CAO, contains the same language as the 2011 MSLA about the period of agreement, payment of services, payment schedule, independent contractor status, and the management fee calculation. (Ex. JE[O] 44, 45.) The 2012 MSLA also was never approved or even considered by the Charter Board at a public meeting. (*See* Ex. JE[O] 3.) No counsel for Olney is listed in the 2012 MSLA.

401. A new MSLA was not executed for the 2013-14 school year.

402. On an unknown date Olney and ASPIRA executed a new MSLA with an effective date of July 1, 2014 (“2014 MSLA”). (Ex. JE[O] 46.) The 2014 MSLA contains slightly different language than the earlier versions, stating in pertinent part:

2.2 Service Costs. In consideration of the Services, OLNEY will pay ASPIRA the Service Costs, which shall be based on the pricing which ASPIRA charges for its services to schools that are similarly situated to OLNEY. The maximum aggregate amount of Service Costs which shall be payable by OLNEY to ASPIRA under the Agreement in any OLNEY school year shall be set forth in the Service Schedule. OLNEY agrees that the Service Costs with respect to each Service shall be subject to change by ASPIRA, not more than once per calendar year, at ASPIRA's reasonable discretion (each a "Service Cost Change"). Each Service Cost Change shall be communicated to OLNEY in writing. Notwithstanding the foregoing or anything to the contrary herein, in no event shall any Service Cost Change with respect to any Service represent an increase of more than \$175,000 percent (5%) as compared to the Service Costs charged for such Service immediately prior to such Service Cost Change. Payment for the Services shall be made in accordance with Section 4 below. . . .

3. PERIOD OF AGREEMENT. The term of this Agreement shall be for a period of one year, commencing upon the Effective Date, and shall automatically renew thereafter from year to year for additional one-year terms unless (i) either Party notifies the other Party of its intention not to renew this Agreement at least thirty (30) days prior to the end of the then current one-year term, or (ii) this Agreement is sooner terminated as provided hereunder.

4. COMPENSATION AND TERMS OF PAYMENT.

4.1 Payment Schedule. ASPIRA shall invoice OLNEY on a monthly basis for the Services that it provides to OLNEY. Each monthly invoice shall include an itemized list of the Services that have been performed and the Service Costs and Operational Costs (as defined in the Service Schedule) associated with such Services. Additional information may be requested by OLNEY management staff for review or if required for audit purposes. Invoiced amounts shall be paid upon OLNEY Management approval or within forty-five (45) days of invoice date

(Ex. JE[O] 46, at 2.)

403. Under the 2014 MSLA, notices to Olney are required to be sent to the attention of the CAO with a copy to the Chair of the Charter Board and the School Principal/Director. (Ex. JE[O] 46, at 12-13.)

404. Stephanie Kosta, Esquire, of Duane Morris is identified in the 2014 MSLA as counsel for ASPIRA. (Ex. JE[O] 46, at 12-13.) No counsel for Olney is listed in the 2014 MSLA.

405. The Service Schedule attached to the 2014 MSLA provides for the following service costs:

2. BUDGET. The maximum aggregate amount of Service Costs which shall be payable by OLNEY to ASPIRA under the Agreement in any OLNEY school year shall be \$3,500,000 (the “Maximum Service Costs Amount”). In addition to the Maximum Service Costs Amount, OLNEY shall pay ASPIRA for the operational costs that ASPIRA incurs in providing the Services to OLNEY (collectively, the “Operational Costs”); provided however, that the maximum aggregate amount of Operational Costs which shall be payable by Olney to ASPIRA under the Agreement in any OLNEY school year shall be an amount equal to 12% of the Maximum Service Costs Amount.

(Ex. JE[O] 46, at 17.)

406. The Charter Board took action to approve the 2014 MSLA at its September 15, 2014 public meeting. (Ex. JE[O] 3, at 77.)

407. On an unknown date, Olney and ASPIRA executed a new MSLA with an effective date of July 1, 2015. (Ex. JE[O] 46.) The 2015 MSLA contains slightly different language than the earlier versions, stating in pertinent part:

2.2 Service Costs. In consideration of the Services, OLNEY will pay ASPIRA a Management Fee of 4% of local school funds plus reimbursement for any Direct Service Costs, which shall be based on the pricing which ASPIRA charges for its services. OLNEY agrees that the Direct Service Costs with respect to each Service shall be subject to change by ASPIRA, not more than once per calendar year, at ASPIRA’s reasonable discretion (each a “Service Cost Change”). Each Service Cost Change shall be communicated to OLNEY in writing. Notwithstanding the foregoing or anything to the contrary herein, in no event shall any Service Cost Change with respect to any Service represent an increase of more than \$175,000 as compared to the Direct Service Costs charged for such Service immediately prior to such Service Cost Change. Payment for the Services shall be made in accordance with Section 4 below. . . .

3. PERIOD OF AGREEMENT. The term of this Agreement shall commence on the Effective Date and shall be for a period that includes the full term of the Olney charter including any extensions, and shall automatically renew thereafter for additional charter terms unless (i) either Party notifies the other Party of its intention not to renew this Agreement for cause at least ninety (90) days prior to the end of the then current fiscal year, or (ii) this Agreement is sooner terminated as provided hereunder.

4. COMPENSATION AND TERMS OF PAYMENT.

4.1 Payment Schedule. ASPIRA shall invoice OLNEY on a monthly basis for the Services that it provides to OLNEY. Each monthly invoice shall include an itemized list of the Services that have been performed and the Direct Service Costs, Operational Costs and Management Fee (as defined in the Service Schedule) associated with such Services. Additional information may be requested by OLNEY management staff for review or if required for audit purposes. Invoiced amounts shall be paid upon OLNEY Management approval or within forty-five (45) days of invoice date. . . .

(Ex. SD[O] 12, at 2.)

408. Under the 2015 MSLA, notices to Olney are required to be sent to the attention of the Superintendent with copies to the Chair of the Charter Board and the School Principal. For the first time, Robert O'Donnell, Esquire of O'Donnell Associates ("O'Donnell") is identified as counsel for Olney. Stephanie Kosta, Esquire, of Duane Morris is again identified in the 2015 MSLA as counsel for ASPIRA. (Ex. SD[O] 12, at 13.)

409. According to the Charter Board minutes dated February 2, 2015, the Superintendent was initially hired by ASPIRA to report directly to ASPIRA's CEO. (Ex. JE[O] 3, at 91-92; Ex. Stetson 41, at 75-76.) That would mean that notices required to be sent by ASPIRA to Olney under the 2015 MSLA would merely be going from one ASPIRA employee to another.

410. The Superintendent, Andrea Gonzalez-Kirwin, is now employed by Stetson. (Tr. vol. 7, at 160:16-161:2.) According to Mr. Darden, Ms. Kirwin provides services to each of the charter schools under an agreement between each of them and Stetson. (*Id.* at 161:9-14.) However, the Charter Board minutes do not reflect the Charter Board ever adopting any service or other agreements between Stetson and any other ASPIRA-managed charter school to reflect the sharing of services of the Superintendent or other "Central Office" staff who would now be employed by Stetson instead of ASPIRA. The Charter Board minutes of February 26, 2018,

reflect a resolution being moved to have Ms. Kirwin and one other employee be employed by Stetson “in the same positions, contractual terms, conditions and benefits as they currently receive” and authorizing the Chair of Stetson’s Charter Board to sign contracts with these two individuals; however, the minutes do not reflect (a) an actual vote on that resolution; or (b) an agreement being acted on among the charter schools related to the services of those two individuals. (Ex. JE[O] 67, at 24.)

411. Mr. Thompson reports to Ms. Kirwin, which means that he reports to someone who works for one of the other charter schools. (Tr. vol. 4, at 172:1-4.)

412. According to the Charter Board minutes, the 2015 MSLA was not approved by the Charter Board until March 21, 2016. (Ex. JE[O] 65, at 25.) Mr. O’Donnell was not present at the March 21, 2016 meeting, according to the minutes. (Ex. JE[O] 65, at 22.)

413. On April 8, 2019, the Charter Board approved two contracts with ASPIRA for each charter school: (a) the “ASPIRA Staffing Agreement”; and (b) a new MSLA. Both documents have an effective date of July 1, 2018, even though they were not approved until April 8, 2019. (Ex. Olney 295; Ex. Stetson 272.)

414. Even though the Superintendent and Senior Director of Curriculum and Instruction are now employees of Stetson and the other charter schools pay Stetson for their services (Tr. vol. 16, at 242-243, 250), the Staffing Agreement obligates Olney to pay ASPIRA for various staff members including the Superintendent and Senior Director, with their salaries allocated to both Olney and Stetson. (Ex. Olney 295, at 27; Ex. Stetson 272, at 27.) The Staffing Agreement also reflects Olney paying ASPIRA for multiple special education teachers and other teachers, at least one of whom is at a 1.0 equivalent, meaning that position would be fully allocated to Olney. (*Id.*)

415. Mr. Yi, ASPIRA's controller, explained that the Superintendent remained included in the Staffing Agreements approved by the Charter Board on April 8, 2019 because they had not been updated to reflect the change in employment of the Superintendent and Senior Director to Stetson. However, that change in employment supposedly occurred by an action item on February 26, 2018, not during the 2018-19 school year, as Mr. Yi suggested. (Tr. vol. 16, at 244-245; Ex. JE[O] 67, at 24.)

416. All of the MSLAs noted above require ASPIRA to present monthly invoices reflecting the charges to the Charter Schools, since those would fluctuate throughout the year. With only one exception since July 1, 2011, the Charter Board meeting minutes do not reflect any ASPIRA invoices being presented or approved by the Charter Board at any public meeting, let alone on a monthly basis. The exception was on February 26, 2018, when the Charter Board entertained a motion¹⁹ to direct ASPIRA to present invoices for approval by the Charter Board in accordance with the MSLA. (Ex. JE[O] 67, at 27-28.) Ten such invoices from ASPIRA for the various charter schools were presented to the Charter Board for approval on February 26, 2018. (*Id.* at 32.)

417. There is no further mention in the Charter Board minutes after February 26, 2018 of any presentation of ASPIRA invoices or any Charter Board action pertaining to any such invoices. (Ex. JE[O] 67, at 34-60; Ex. SD[O] 32.)

418. In the Renewal Application, Olney described the Central Office that was created "to support the new instructional direction and accelerate academic growth at all ASPIRA schools. In addition to a new superintendent, new Senior Director roles in Teaching & Learning,

¹⁹ The February 26, 2018 minutes do not reflect an actual vote or outcome of a vote on this resolution.

Specialized Services, and School Support Services were added to ensure schools staff received focused support and leadership.” (Ex. JE[O] 34, at 57.)

419. Even though ASPIRA was chosen as the turnaround team for Olney due to its experience as the management company for Pantoja and Hostos, not a single ASPIRA employee or Central Office employee with responsibility for the educational program testified at the hearing. The Superintendent also did not testify at the hearing.

Fiscal Management and Audited Financial Statements

Cross Collateralization of PNC Bank and Provident Bank Debt

420. On October 14, 2011, ACE/Dougherty purchased the former Cardinal Dougherty High School building located at 6301 N. 2nd Street, Philadelphia from the Archdiocese of Philadelphia. (Ex. JE[O] 99; Ex. Olney 100, at 105.)

421. Hostos is located at 6301 N. 2nd Street, Philadelphia.

422. On October 19, 2011, ACE/Dougherty and ASPIRA entered into a Bond Purchase and Loan Agreement with the Philadelphia Authority for Industrial Development and PNC Bank for the issuance of \$12,750,000 in Revenue Bonds to finance the acquisition, construction, renovation, installation and equipping of the Dougherty facility. (Ex. Olney 100.)

423. The bonds were structured as monthly interest-only payments with a balloon payment being due for the entire amount in October of 2016. (Tr. vol. 7, at 73:9-15.)

424. As part of the PNC financing deal, Fox Rothschild, LLP, acted as (a) bond counsel to the Philadelphia Authority for Industrial Development; (b) counsel to ACE/Dougherty and ASPIRA; and (c) counsel to Aspira Community Enterprises, Hostos, Stetson, Cyber, Olney and Pantoja. (Ex. Olney 100, at 295-298, 304-314; Ex. Olney 101.)

425. Thus, as noted by Gary Samms, Fox Rothschild acted as counsel for all of the ASPIRA-related entities, including all five of the charter schools. (Tr. vol. 10, at 181:18-23.)

426. On October 19, 2011, Fox Rothschild provided an opinion letter to PNC Bank, at PNC Bank's request, which renders various opinions about the borrowers' actions and obligations. The letter states in pertinent part:

As to any facts material to our opinions expressed herein, we have relied upon the representations and warranties of the Loan Parties contained in the Loan Documents and upon a certificate of the Chief Executive Officer or such other officer of the Loan Parties with respect to certain factual matters.

(Ex. Olney 101, at 3.)

427. Even though the "Loan Parties" are described in the Fox Rothschild letter as being inclusive of all of the Charter Schools, the only certificates attached to the PNC Bank Loan Documents are from the officers of ASPIRA and ACE/Dougherty. (Ex. Olney 100, at 172-251.) No certificates from any of the charter schools are included in the Loan Documents.

428. In addition to the \$12,500,000 bond financing, PNC Bank made the following additional loans to the following parties as part of the October 19, 2011 financing: (a) a \$5,004,004.47 Term Loan to Aspira Community Enterprises; (b) a \$900,000 Committed Line of Credit to ASPIRA; (c) a \$629,554.66 Term Loan to ASPIRA; (d) a \$50,000 Committed Line of Credit to Hostos; and (e) a \$50,000 Committed Line of Credit to ASPIRA and Stetson. (Ex. Stetson 259-262.)

429. As required security, all of these additional loans were guaranteed by Olney, Stetson, Hostos and Pantoja, through the security agreements granting PNC Bank first priority perfected liens on the gross revenues of each entity. (Ex. Stetson 259-262, at 1-2 in each.)

430. To secure these lines of credit, Olney entered into a Security Agreement with PNC on October 19, 2011. (Ex. Olney 289.) As "Collateral" for the loan, Olney agreed to pledge

“all Gross Revenues, tuition, grants, amounts received from fund raising, net assets released from restriction, registration fees, investment income, subsidies, bequests, rental income, ticket sale income and similar assets” (*Id.* at 33.)

431. “Gross Revenue,” was defined to include:

all receipts, revenues, income and other moneys received by or on behalf of [Olney], including without limitation, contributions, donations and pledges whether in the form of cash, securities or other personal property, revenue derived from the operation of the facilities of [Olney], and all rights to receive the same, whether in the form of Accounts, money, contract rights, chattel paper, documents, deposit accounts, general intangibles . . . , securities, investment property and instruments with respect thereto

The “Collateral” was pledged to secure certain “Obligations,” which were defined to include loans, advances and debts of Olney, as well as those of ASPIRA, ACE/Dougherty, and Hostos to PNC. (Olney 289, at 33-34.)

432. Olney also granted PNC a number of other rights, including power of attorney to collect any funds to satisfy the obligations incurred by Olney, ASPIRA, ACE/Dougherty, or Hostos. (Olney 289, at 36-37.)

433. Olney did not receive any lines of credit, loans or other money as a result of the 2011 PNC Bank financing.

434. The Charter Schools did not produce any evidence that the Fox Rothschild letter was ever provided to their Charter Boards to review, or that Fox Rothschild ever provided their Charter Boards with any legal advice about the PNC Bank transaction. Fox Rothschild attorneys are not listed as being in attendance at any Charter Board meeting, and the Charter Boards never took action to retain or engage any Fox Rothschild counsel at a public meeting.

435. The Charter Boards did not take any action during the 2011-12 school year (or any other time) to approve any of the charter schools entering into the PNC Bank transactions or

to approve any of the officers of the Charter Board to sign the various lending agreements that were required by PNC Bank. (Ex. JE[O] 3; Ex. JE[S] 38; 3/13/19 NT. 186-187.)

436. For reasons unknown to the School District, Olney's role in the PNC Bank loans was not disclosed in Olney's audited financial statements until the statements issued for the year ending June 30, 2017. (Ex. JE[O] 9, at 25.) Stetson's role in the PNC Bank loans was not disclosed in Stetson's audited financial statements until the statements issued for the year ending June 30, 2014. (Ex. JE[S] 5, at 19-20.)

437. At the time Pantoja and Hostos were considered for renewal in the 2012-13 school year, the CSO was not aware of the cross-collateralization issues. (Tr. vol. 16, at 339:14-340:3.) Because the Charter Board did not take any action relative to the PNC Bank financing, neither the CSO nor OAS would have been made aware of those matters by reviewing the Charter Board minutes.

438. Mr. Darden did not become aware of the PNC Bank financing until he was employed by ASPIRA. (Tr. vol. 7, at 54:10-18.)

439. On July 25, 2014, Mr. Chao sent a letter to Alfredo Calderon, the CEO of ASPIRA. The reference line addresses all of the four brick and mortar charter schools managed by ASPIRA, as well as ASPIRA itself. The letter states in pertinent part:

I write in connection with the documents Aspira Inc. of Pennsylvania ("Aspira") has provided to the Charter Schools Office ("CSO") related to Aspira, Antonio Pantoja Charter School ("Pantoja"), Eugenio DeHostos Charter School ("DeHostos"), John B. Stetson Charter School ("Stetson"), and Olney Charter High School ("Olney").

We have a number of concerns:

1. Aspira, Pantoja, DeHostos, Stetson, and Olney are each separate Pennsylvania nonprofit corporations. The four charter schools are not subsidiaries of Aspira and cannot be operated as if they are subsidiaries.

2. The “intercompany” payables and receivables which appear on the audited financials for Aspira, Pantoja, DeHostos, Stetson and Olney are not a permissible use of charter school funds. As such, the payables and receivables should be paid off, and such “intercompany” transactions should not be used in the future.

3. Aspira should renegotiate its bank loans that involve a specific charter school guaranteeing the debt of Aspira or of another charter school. Such arrangements are not permissible.

4. All of the charter schools cannot have the same board of trustees. Under the Charter School Law, the Pennsylvania Public Officials and Employee Ethics act, and the Pennsylvania Nonprofit Law a majority of “disinterested” trustees must approve any contracts or transactions with an entity with which interested trustees have an interest or a conflict. It is not clear how any of the intercompany transactions between the charter schools could have been approved when all of the charter schools have the same board.

We request that Aspira provide a detailed plan to the CSO by August 15, 2014 outlining the measures Aspira has taken or will take to address the issues identified above. Please contact me if you have any questions.

(Ex. SD[O] 24, at 1-2.)

440. This letter was sent to Calderon because he was the head of the management organization that operated each of the charter schools. No one responded to the letter, so Mr. Chao sent two follow-up letters, dated October 6, 2014 and October 15, 2014. (Ex. SD[O] 24, at 3-4; Tr. vol. 16, at 306:22-18.)

441. On December 15, 2014, Stephanie Kosta, Esquire, an attorney at Duane Morris, wrote to the School District’s in-house counsel, Elizabeth Gutman, Esquire, in response to Mr. Chao’s letters. Her letter stated in pertinent part:

Thank you for your patience with Aspira, Inc. of Pennsylvania’s (“Aspira”) response to the letter of Mr. Chao, which sought an outline of measures that Aspira has undertaken or will undertake to address the concerns of the Charter School Office (“CSO”). As we have discussed on multiple occasions over the last few months, some of CSO’s clarification requests were not in the control of Aspira. Coordination between the Charter School Boards was necessary, and in some cases, resolutions had to be drafted, proposed, and voted on by the various schools’ boards.

Please see below the issues that the CSO raised and answers thereto:

1. *The CSO stated: Aspira, Pantoja, DeHostos, Stetson, and Olney are each separate Pennsylvania nonprofit corporations. The four charter schools are not subsidiaries of Aspira and cannot be operated as if they are subsidiaries.*

Aspira understands the CSO's concerns and assures the CSO that each school is set up as a separate entity and is run by an entirely separate board than that of Aspira. In addition, the schools retain separate outside legal counsel from Aspira, that independently advises the school boards. Aspira is a management company, and serves at the pleasure of the school boards. Any conception that schools are operated as "subsidiaries" of Aspira is both legally and factually inaccurate.

2. *The CSO stated: The "intercompany" payables and receivables which appear on the audited financials for Aspira, Pantoja, DeHostos, Stetson and Olney are not a permissible use of charter school funds. As such, the payables and receivables should be paid off, and such "intercompany" transactions should not be used in the future.*

As we have spoken about during our various phone calls, the School Boards and Aspira have agreed that no intercompany loans shall be issued in the future. The payables and receivables of any past loans were satisfied prior to the receipt of CSO letter.

3. *The CSO stated: Aspira should renegotiate its bank loans that involve a specific charter school guaranteeing the debt of Aspira or of another charter school. Such arrangements are not permissible.*

Aspira understands the concerns of the School District. We have contacted the lender and the lender is unwilling to renegotiate the loans with reasonable terms at this time. However, when it comes time to refinance the loans, Aspira will endeavor to remove any guarantee by any charter school.

4. *All of the charter schools cannot have the same board of trustees. Under the Charter School Law, the Pennsylvania Public Officials and Employee Ethics act, and the Pennsylvania Nonprofit Law a majority of "disinterested" trustees must approve any contracts or transactions with an entity with which interested trustees have an interest or a conflict. It is not clear how any of the intercompany transactions between the charter schools could have been approved when all of the charter schools have the same board.*

After review of the cited resources, I can find no prohibition regarding individuals sitting on multiple charter boards. Kindly direct me to those passages and I will advise my client accordingly. By way of further answer, each member of each board is entirely devoted to the schools he or she services. In addition, it is not true that the board of each school is identical to that of the other schools – there are variations of board member between the schools.

Nonetheless, Aspira and the School Boards understand the concerns of the

CSO, and each board has instituted a Conflict of Interest Policy, a sample of which is enclosed herein. The Policies set up a procedure for any Trustee to notify the Board of a conflict. If a conflict arises, the Trustee will be excluded from any decision making or voting process. If a majority of the Board is conflicted, then the contract or transaction will be referred to a Committee of Disinterested Board Members for disposition. Those Policies, drafted prior to the CBO's [sic] letter expressing concerns, coupled with the School Board's positions that there will be no intercompany loans among the schools, should address the concerns of the CBO [sic].

(Ex. SD[O] 25 (emphasis in original).)

442. On January 22, 2015, the CSO issued a Renewal Recommendation Report ("2015 Renewal Report") for Stetson, recommending a one-year renewal with conditions. The report raised various financial issues regarding Stetson's operations, including but not limited to the guarantees that had been entered into by Stetson in the PNC Bank transactions. (Ex. Stetson 22, at 12.) The 2015 Renewal Report did not delineate what conditions would be required to address the noted deficiencies.

443. A one-year charter was never executed between the School District and Stetson.

444. On March 16, 2015, prior to Stetson and Olney being recommended for nonrenewal, ASPIRA's outside CPA, Roger Masch, raised concerns to the Charter Board about the finances of Hostos relative to the ACE/Dougherty property, and the PNC financing. The March 16, 2015 meeting minutes state as follows:

Roger Masch referred that the financial statement ended on February 8, 2015. The report is basically the same as last month. There is still much concern on the Finances of the Hostos School. The reason for the concern is that Hostos is a very small school housed in a very large building which is expensive to maintain. When Hostos was moved to the Campus, there were plans to expand the school; but the School District did not approve the expansion. We have met with two banks to consider refinancing of the mortgage, and one of the banks, PNC, suggested that we float a bond, which is not our choice.

The board of trustees requested that a timeline of options to solve the Hostos Financial situation be presented to the board by June 2015. These options should include potential cuts for the future.

(Ex. JE[O] 3, at 98-99; Ex. JE[S] 41, at 83-84.)

445. In September of 2015, Mr. Darden took over the role of leading ASPIRA's efforts to refinance the PNC Bank debt. (Tr. vol. 5, at 274:15-19.) At that time, ASPIRA had not yet entered into the financing later provided by Provident Bank. (Tr. vol. 7, at 130:6-11.)

446. On November 16, 2015, Mr. Masch reported to the Charter Board that Olney and Cyber moving into the Hostos building would help Hostos absorb some of the building's cost. (Ex. JE[O] 65, at 11; Ex. JE[S] 42, at 11.) On March 21, 2016, he again reported to the Charter Board that Hostos is a "small school in a big expensive building," and suggested that cost sharing must be kept high to keep costs low at Hostos. (Ex. JE[O] 65, at 23; Ex. JE[S] 42, at 23.)

447. On April 11, 2016, the CSO issued a Renewal Recommendation Report related to Stetson, recommending that Stetson's Charter not be renewed for multiple reasons, including the concerns related to the intercompany transactions and security agreements with related parties. (Ex. JE[S] 16, at 7, 21.)

448. On April 11, 2016, the CSO also issued a Renewal Recommendation Report related to Olney, recommending that Olney's Charter not be renewed for multiple reasons, including the concerns related to the intercompany transactions and security agreements with related parties. (Ex. SD[O] 17, at 7, 26.)

449. On April 22, 2016, ASPIRA, as the Borrower, entered into a Security Agreement with Provident Bank, in which ASPIRA Community Enterprises, Inc., ACE/Dougherty, Hostos, Pantoja, Cyber, Stetson and Olney were all listed as Grantors (collectively, "Provident Guarantors"). (Ex. JE[O] 81, at 1.) The Security Agreement provided as follows:

2.1 **Grant of Security.** Subject to the Intercreditor Agreement by and between Lender and PNC Bank, National Association of even date hereof, each Grantor hereby assigns to Lender, and hereby grants to Lender a security interest

in, all of such Grantor's right, title and interest in any to all of the personal property of such Grantor including the following”

(*Id.*)

450. The Security Agreement goes on to list all of the personal property that was pledged as security, including all revenue of each Guarantor. (Ex. JE[O] 81, at 2.) The Security Agreement is signed by Carmen Paris on behalf of Olney, Stetson, Hostos and Pantoja. (*Id.* at 12-13.)

451. Other documents were also executed on April 22, 2016 for the Provident Bank transaction, including: (a) a Credit Agreement between ASPIRA and Provident Bank; (b) a Guarantee Agreement between the Guarantors and Provident Bank; (c) Open-End Mortgage, Security Agreement and Fixture Filing; (d) Written Consents of the Directors in lieu of organizational meeting; (e) Secretary's Certificates; (f) Intercreditor Agreement; and (g) Absolute Assignment of Leases, Rents, Income and Profits. (Ex. JE[O] 82-88.)

452. The purpose of the Guarantee Agreement was to guarantee ASPIRA's debt under the Credit Agreement, which included a Term Loan and a Revolving Line of Credit in the amount of \$3,300,000. (Ex. JE[O] 83, JE[O] 84; Tr. vol. 8, at 307:6-9, 308:13-19.) Carmen Paris signed the Guarantee Agreement on behalf of Olney, Stetson, Pantoja and Hostos. (Ex. JE[O] 83, at 13-14.)

453. Pantoja, Hostos, ACE/Dougherty and Aspira Community Enterprises each entered into Open-End mortgages with Provident Bank related to the Credit Agreement, providing a mortgage for their respective properties. (Ex. JE[O] 84.)

454. Board members of ASPIRA and the Provident Guarantors each provided a Written Consent in Lieu of Organization Meeting (“Written Consent”) to Provident Bank as part

of the closing documents. The Written Consents for the Charter Schools each state in pertinent part:

The undersigned, being all of the acting members of the Board of Trustees of [Olney/Stetson] . . . , a Pennsylvania nonprofit corporation (the “Company”), in accordance with the applicable provisions of the Pennsylvania Nonprofit Corporation Law of 1988, as amended, do hereby consent to, approve and adopt the following resolutions in lieu of an organization meeting:

WHEREAS, Aspira, Inc. of Pennsylvania (the “Borrower”) has requested The Provident Bank, a New Jersey chartered bank (the “Bank”) to extend certain credit facilities to the Borrower (the “Credit Facilities”) to support the Borrower’s working capital and to finance certain acquisitions by the Borrower;

WHEREAS, it is deemed to be in the best interests of the Company to facilitate the Borrower’s entering into the Credit Facilities with the Bank;

WHEREAS, in order to secure any indebtedness incurred by the Borrower under the Credit Facilities, and as inducement for the Bank to enter into the Credit Facilities with the Borrower, the Bank has required that the Company grant to the Bank a security interest in all of the assets of the Company, execute a guaranty of the Borrower’s indebtedness under the Credit Facilities in favor of the Bank, and take such other steps as may be required by the Bank to further secure the Borrower’s indebtedness under the Credit Facilities and the Company’s guaranty of such indebtedness.

NOW THEREFORE, it is hereby

RESOLVED, that the Company is authorized to take all necessary and appropriate actions to induce the Bank to provide the Credit Facilities to the Borrower.

(Ex. JE[O] 85, at 36-58, 75-83.)

455. The following individuals each signed a Written Consent for Olney, Stetson, Pantoja and Hostos: Jennifer Albandoz, Zoraida Ortiz, Frederick Ramirez, Carmen Paris and Orlando Quevedo. (Ex. JE[O] 85.)

456. None of the parent representatives for Olney, Stetson, Hostos or Pantoja signed a Written Consent. (Ex. JE[O] 85; Tr. vol. 11, at 34:13-16.)

457. A Secretary's Certificate was also signed by each of the Provident Guarantors, which stated in pertinent part:

This Certificate is delivered by [Stetson/Olney] (the "Company") pursuant to that certain Credit Agreement . . . dated April 21, 2016, between Aspira, Inc. of Pennsylvania and The Provident Bank, a New Jersey chartered bank

The undersigned, being the duly authorized and currently acting Secretary of the Company, hereby certifies as follows:

* * *

2. Attached hereto as Exhibit A is a true, complete and correct copy of the resolutions of the Board of Trustees of the Company which were duly adopted on April 21, 2016. Such resolutions were adopted in accordance with applicable law and all procedural rules specified in the Company's By-Laws, have not in any way been amended, modified, revoked or rescinded and, have been in full force and effect since their adoption, to and including the date hereof, and are now in full force and effect.

(Ex. JE[O] 86, at 7-18.)

458. Attached as Exhibit A to the Secretary Certificates signed by Carmen Paris and Jennifer Albandoz on behalf of the Charter Schools are the resolutions for the respective Charter School referenced in numbered paragraph 2 of the Secretary's Certificate. (Ex. JE[O] 86, at 9, 15.)

459. As noted in their title, the Written Consents were executed in lieu of holding an actual meeting. The Charter Board meeting minutes do not reflect discussion or notification of the Provident Bank financing or any action items being taken to approve the Guarantee Agreement, the Written Consents, the Secretary Certificates or any other agreements that were entered into on April 22, 2016 by Olney, Stetson, Hostos or Pantoja.

460. Despite the language in the Secretary Certificates certifying that the resolutions were adopted by the Company in accordance with applicable law and all procedural rules in the

Bylaws, the Charter Schools' Charter Boards never took action at a public meeting to approve the resolutions.

461. Buchanan Ingersoll represented Provident Bank in the April 2016 transaction. (Tr. vol. 11, at 20:10-13.)

462. As part of the Provident Bank transaction, Duane Morris acted as special counsel to ASPIRA, as the Borrower, and to ACE/Dougherty, Hostos, Pantoja, Cyber, Stetson and Olney in their capacity as Guarantors. On April 22, 2016, Duane Morris provided an opinion letter to Provident Bank, at Provident Bank's request, which renders various opinions about the Borrower's actions and obligations. As to the Guarantors, the letter states as follows:

We have assumed that the Guarantor(s) received adequate consideration for undertaking their liabilities and obligations under the Guarantor Documents. Our opinions as to the validity, binding effect or enforceability of any of the Guarantor Documents or to the availability of injunctive relief and other equitable remedies is subject to the effect of rules of law that may render guarantees and agreements in the nature of guarantees unenforceable

(Ex. Olney 294, at 7.)

463. Duane Morris did not address the Charter School Law at all in its letter, or indicate that it had conducted an evaluation of the effect of the Charter School Law on the Guarantor's actions or obligations. In fact, Duane Morris' letter explicitly states:

The opinions expressed herein are limited to (i) the Pennsylvania nonprofit corporation law and (ii) those Federal laws of the United States of America and those laws of the Commonwealth, in each case which, in our experience, without having made any special investigation as to the applicability of any specific law are normally applicable to transactions of the type contemplated by the Credit Agreement (collectively, the "Applicable Laws").

(Ex. Olney 294, at 14.)

464. The Charter Schools did not present any evidence that the Duane Morris letter was ever provided to the Charter Boards to review, or that Duane Morris ever provided the Charter Boards with any legal advice about the Provident Bank transactions. No Duane Morris

attorneys are listed as being in attendance at any Charter Board meeting, and the Charter Board never took action to retain or engage any Duane Morris counsel at a public meeting.

465. Mr. Yi was designated as the records custodian for Olney pursuant to a subpoena served by the School District, and presented the Fox Rothschild and Duane Morris letters during his testimony. When asked on cross-examination where he found the Fox Rothschild and Duane Morris letters, he responded that he obtained them from ASPIRA's files, not Olney's files. He further testified that he did not know if any member of Stetson or Olney's Charter Board reviewed the Fox Rothschild or Duane Morris letters when they were issued. (Tr. vol. 16, at 217:12-218:20.)

466. Olney's audited financial statements did not disclose the PNC Bank transactions or the Provident Bank transactions until the statements issued for fiscal year ending June 30, 2017. (Ex. JE[O] 4-9; Tr. vol. 4, at 22-24.)

467. A forbearance agreement is an agreement between a lender and a borrower in which the lender agrees not to execute all of its rights to collect on the debt. Forbearance occurs when the borrower has not met the payment terms of a debt and there has been an agreement with the lender to extend payment beyond the payment terms of the loan. (Tr. vol. 4, at 27:5-12; Tr. vol. 8, at 323:17-22.)

468. On March 16, 2017, ASPIRA and the Provident Guarantors (collectively, the "Obligated Parties") entered into a Forbearance Agreement under which Provident Bank agreed to forbear from the exercise of its rights and remedies until July 1, 2017. (Ex. Olney 115, at 1-2.)

469. On July 5, 2017, Provident Bank and the Obligated Parties entered into a First Amendment to Forbearance Agreement through October 31, 2017 ("First Amendment") for the stated purpose of "allow[ing] the Obligated Parties to obtain financing to pay-off the balance due

and owing on all financial obligations to Lender.” (Ex. Olney 115, at 3.) In the First Amendment, the Obligated Parties reaffirmed that “they are indebted to Lender on the obligations evidenced by the Loan Agreements” in the amount of \$803,399.42, plus *per diem* interest. (*Id.* at 4.) Madalyn Grajales signed the First Amendment on behalf of Pantoja, Cyber, Olney and Stetson, and Jennifer Albandoz signed on behalf of Hostos. (*Id.* at 12-15.)

470. The Obligated Parties did not obtain financing to pay-off the balance due and owing to Lender between July 5, 2017 and October 31, 2017.

471. On December 29, 2017, Provident Bank and the Obligated Parties entered into a Second Amendment to Forbearance Agreement through February 28, 2018 (“Second Amendment”). (Ex. Olney 113.) In the Second Amendment, the Obligated Parties reaffirmed that “they are indebted to Lender on the obligations evidenced by the Loan Agreements” in the amount of \$808,299.36 plus *per diem* interest. (*Id.* at 2.) Jennifer Albandoz signed the Second Amendment on behalf of Hostos, Pantoja, Cyber, Olney and Stetson. (*Id.* at 9-11.)

472. On April 16, 2018, Provident Bank and the Obligated Parties entered into a Third Amendment to Forbearance Agreement through December 31, 2018 (“Third Amendment”). (Ex. Olney 114.) In the Third Amendment, the Obligated Parties again reaffirmed that “they are indebted to Lender on the obligations evidenced by the Loan Agreements,” but the total amount of indebtedness due was not stated. (*Id.* at 2.) Jennifer Albandoz signed the Third Amendment on behalf of Hostos, Pantoja, Cyber, Olney and Stetson. (*Id.* at 9-11.)

473. The original Forbearance Agreement, the First Amendment, the Second Amendment and the Third Amendment were never approved at a public meeting by Olney or Stetson’s Charter Board. (Tr. vol. 11, at 38-41.)

474. On October 1, 2016, PNC Bank and the Borrowers entered into a new Forbearance Agreement, under which the Lender agreed to forbear from the exercise of its rights and remedies until January 1, 2017. The principal amounts outstanding at the time of this forbearance totaled \$14,011,709.41. (Ex. Olney 109, at 3.)

475. Amended Forbearance Agreements then entered into with PNC dated February 23, 2017 and December 18, 2017, extending the forbearance period through December 31, 2018. (Ex. Olney 108, 110.) Each one includes a Consent or Acknowledgment of Guarantor, which is signed by the Board Chair on behalf of Hostos and Pantoja. (Ex. Olney 108, at 9; Ex. Olney 109, at 9; Ex. Olney 110, at 13.)

476. There is no indication in the Charter Board meeting minutes that any Charter Board took action to approve any of the PNC Forbearance Agreements on behalf of Hostos or Pantoja.

477. Mr. Darden was not asked by his own counsel if Olney or Stetson received a benefit from the Provident Bank financing. When asked on cross-examination, the only tangible benefit Mr. Darden identified was Olney's ability to lease a portion of the ACE/Dougherty facility. He also mentioned that the ASPIRA-managed charter schools benefit from having a self-insured health plan, but the creation of such a plan has not been linked to the financing or guarantees. the Charter Schools could have started a self-insured health plan without guaranteeing the financing transactions. (Tr. vol. 7, at 82-87.)

478. As of Mr. Darden's testimony on March 25, 2019, the Forbearance Agreements with PNC Bank and Provident Bank had not been extended beyond December 31, 2018. (Tr. vol. 7, at 183:19-24.)

479. On April 15, 2019, Mr. Yi disclosed that on April 8, 2019, the Charter Board approved a motion to review and ratify a Fifth Amended Forbearance Agreement. The motion in the Charter Board minutes does not identify the lending institution involved, but Mr. Yi believed it was PNC Bank. Mr. Yi did not know if there was a similar motion addressing the Provident Bank forbearance. (Ex. Olney 295, at 76; Ex. Stetson 272, at 68; Tr. vol. 16, at 227:21-231:21.)

480. ASPIRA and its affiliated entities have attempted to complete refinancing in 2016, again in 2017, and again in 2018, and the refinancing has never been able to occur. (Tr. vol. 7, at 182:18-183:7.)

481. As of the date of the last hearing, the PNC Bank and Provident Bank loans had not been refinanced, and the guarantees had not been removed. (Tr. vol. 16, at 312:1-5.)

482. Mr. Darden testified on March 25, 2019 that a lender has been found who is willing to refinance the loans without renewals for the Charter Schools, which was not the case in the previous attempts to obtain refinancing (Tr. vol. 7, at 209-210, 228:13-20), but no term sheet for the financing was provided. No testimony was provided by any lender who might be interested in providing the refinancing that Mr. Darden described. On March 25, 2019, Mr. Darden testified that the refinancing was supposed to close on May 15, possibly early June 2019, given his experience with bond transactions. (Tr. vol. 7, at 81:5-19, 182:10-17.)

483. As of the date of these findings of fact, Olney has not sought to reopen the record or otherwise informed the tribunal that any such refinancing had occurred.

484. As of June 30, 2018, the balance of the lending transactions that Olney had guaranteed or secured was \$13,629,657. (Tr. vol. 4, at 51:5-13; Ex. SD[O] 9, at 4.)

485. If the Charter Schools would close, that closure would have an impact on ASPIRA's revenue. (Tr. vol. 7, at 199:4-8.)

Intercompany Loans

486. In the 2011-12 school year, money began being exchanged between Olney and ASPIRA, and between Olney and other charter schools managed by ASPIRA, unrelated to the management fees or any services that were being performed by one entity for another. Olney's independent auditors reported the payables among these parties in the audited financial statements, and stated that the "payables with related parties are unsecured, non-interest bearing and have no repayment terms." (Ex. JE[O] 4-10, Notes; Tr. vol. 3, at 18:15-19.)

487. By the end of the first year of Olney's operation, ASPIRA owed Olney almost \$1.5 million, and Hostos, Stetson and Cyber owed Olney almost \$150,000. (Ex. JE[O] 4, at 19.)

488. These intercompany loans continued to occur during the 2012-13, 2013-14, and 2014-15 school years. By the end of the 2014-15 school year, ASPIRA owed Olney \$2,516,821. (Ex. SD[O] 9, at 3; Ex. JE[O] 7, at note 11.)

489. According to the Charter Board minutes, none of the intercompany loans or transactions were authorized by any action of Olney's Charter Board during those school years. (Ex. JE[O] 3; Ex. JE[S] 38-42.)

490. Mr. Darden assumed the oversight of ASPIRA's finance and accounting functions in May 2016, after having served as chief operating officer for ASPIRA since January of 2014. (Tr. vol. 5, at 271:11-18.) Mr. Darden testified that he had to assemble a new finance team and put together the books and paperwork for the auditors to review, which was not completed until November 2016. As a result, the audit for the 2015-16 school year was not completed until January of 2017. (Tr. vol. 6, at 285:6-15.)

491. Mr. Darden expressed his dislike for intercompany transfers, which he confirmed are the balances noted in the auditor's reports owed between the ASPIRA-managed entities and ASPIRA, and confirmed that they are accurately described in those reports:

So prior to my assuming or approximately early—the first couple of months of my assuming oversight of the finance accounting functions in May of 2016, we went back and reviewed the intercompany transactions. And, you know, I didn't like those intercompany transactions then, I don't like them now, but through our review of all of the records for the intercompany transactions, you know, we didn't find anything that indicated to us that these balances that built up were incorrect Once we understood those balances, we then put in place through the accounting changes that we made, you know, all of the things that you would expect to normally see. So if there was a transaction, it had a purchase order. That purchase order then was paid via an invoice, so you had visibility of those transactions and our job since then was to try to reduce those intercompany balances.

(Tr. vol. 7, at 40:22-41:24, 171:13-172:3.)

492. He further testified that: “there had previously been intercompany balances that had buildup [sic], and you know, didn't like those intercompany balances that I found when I took over the finance and accounting function. My goal was then to eliminate those, put ASPIRA in a position where those types of transactions would not need to occur ever again” (Tr. vol. 7, at 88:9-15.)

493. “Since May of 2016,” Mr. Darden does not believe that money has been moved by ASPIRA in the same manner that Mr. Krain described in his testimony. (Tr. vol. 7, at 48:15-49:13.) Prior to that time, there was not a process of documenting intercompany transactions, in terms of purchase orders or invoices. (Tr. vol. 16, at 50-51.)

494. The Charter Board minutes do not reflect any action related to the intercompany balances that had accumulated prior to May of 2016, including the approval or execution of any promissory notes.

495. Contrary to the representation in Ms. Kosta's December 15, 2014 letter, the intercompany loans had not been paid off by or before December 15, 2014. According to Mr. Darden, when he took over the accounting functions in May of 2016, the outstanding balance owed to Olney by ASPIRA was \$2.4 million. It took until late 2016 for the amount to be cut to

approximately \$1 million, and then until 2017, for the remaining \$1 million balance to be paid off. (Tr. vol. 7, at 173:4-174:9.)

496. According to the audited financial statements, as of June 30, 2017, a receivable in the amount of \$433,656 from ASPIRA remained on Olney's balance sheet (Ex. JE[O] 9, at 25), which means that the full amount was not paid off until sometime in the 2017-18 school year, possibly at or around the same time as the nonrenewal resolution.

497. Contrary to Ms. Kosta's representations in the December 15, 2014 letter, the ASPIRA-managed charter schools, under the direction of Mr. Darden and other new members of ASPIRA's financial team, engaged in further intercompany transfers and borrowing after December 2014. According to the Charter Board minutes of January 22, 2018, Mr. Darden provided a Finance Report to the Charter Board, in which he stated the following:

Mr. Darden reviewed historical patterns in budget. He stated that schools will be able to pay down loans when they get refinancing done. Mr. Donaldson [sic] commented that structure depends on successful refinancing. Mr. Darden stated this will be discussed with Finance Committee. Mr. Darden also explained that the SRC has asked that Promissory Notes be but [sic] in place. That is is [sic] reported where loans stand and when they are to be paid. Board agreed to hold off on notes until we meet in February. We will vote on them then.

(Ex. JE[O] 67, at 20.)

498. On February 26, 2018, the Charter Board minutes reflect the following report and actions. Mr. Darden provided a Finance Report, in which he stated as follows:

Mr. Darden provided the Board with a review. Ms. Albandoz asked what will happen if the refinancing does not occur. Mr. Darden replied that promissory notes will have to be but (sic) in place until we can refinance. When the refinancing is put in place each school would have accounts and intercompany borrowing will end. Ms. Grajales asked what is the time frame that ASPIRA will pay back Stetson. Mr. Darden answered by June 2019. Ms. Albandoz announced she was abstaining from this vote.

The Board then took two actions: (a) "Motion made by Madelyn Grajales to APPROVE the promissory notes and SECONDED by Lillian English-Hentz. MOTION CARRIED"; and (b)

with respect to a “Working capital borrowing projected from February 1, 2018, through March 31, 2018,” MOTION made by Madelyn Grajales to ACCEPT the approval of John B. Stetson loans to Cyber, Hostos and ASPIRA, Inc., and SECONDED by Adelaida Morales. MOTION CARRIED.” (Ex. JE[O] 67, at 31.)

499. Neither motion reflects the amount of the promissory notes or the amount of the loans being made, or who the specific parties are to either the promissory notes or the loans.

500. During the hearings, the School District acquired copies of five “Promissory Demand Notes” that were approved on February 26, 2018, which reflect the following entities lending money to the “Borrowers” “to fund the individual working capital needs related to the operations of individual schools”: (a) Stetson lending ASPIRA the amount of \$1,189,536; (b) ASPIRA lending Pantoja the amount of \$62,294; (c) ASPIRA lending Cyber the amount of \$156,924; (d) ASPIRA lending Hostos the amount of \$368,379; and (e) ASPIRA lending Olney the amount of \$116,861. (Ex. SD[O] 22.)

501. All of the Promissory Demand Notes are interest-free and have a due and payable date of no later than June 30, 2019. There is no security in the promissory notes in the event that any Borrower fails to pay by June 30, 2019. (Ex. SD[O] 22; Tr. vol. 7, at 177-178.)

502. On cross-examination, Mr. Darden explained the action items that were taken at the February 26, 2018 meeting. In addition to approval of the Promissory Demand Notes (Ex. SD[O] 22), the Charter Board approved additional borrowing from Stetson, as the lender, to ASPIRA, as the borrower, through June 30, 2019, setting a maximum amount of \$1.9 million based on a cash flow forecast. The \$1,189,536 from the Stetson loan to ASPIRA is included in the \$1.9 million maximum borrowing. As of March 25, 2019, the full \$1.9 million has been borrowed and was outstanding. (Tr. vol. 7, at 179:19-181:19.)

503. The minutes do not reflect any Charter Board member for any of the Charter Schools recusing or abstaining themselves from the discussion or votes related to the Promissory Notes or loan actions. It is not known if Ms. Albandoz actually abstained from voting as she said she intended to do with respect to the Promissory Notes vote (but not the working capital borrowing for the second action item), because there are no roll call votes reflected in the minutes. Nor does any Charter Board member disclose any conflict in the minutes, prior to voting on the matters. There is no reference to a Committee of Disinterested Board members in the meeting minutes or any discussion whatsoever regarding the need to ensure that only disinterested board members vote on the transactions. Nor do the minutes reflect Stetson, Cyber, Hostos and ASPIRA having separate counsel as these matters were discussed. Robert O'Donnell is present at the meeting as "Board Counsel," but no other attorneys were present. (Ex. JE[O] 67, at 24.)

504. The refinancing referenced by Mr. Darden in the January and February Charter Board minutes never occurred in 2018.

505. Mayer Krain is a Certified Public Accountant and auditor in the School District's OAS. (Tr. vol. 4, at 88-90.) The OAS regularly performs audits of charter schools during their renewal years and provides information to the CSO to assist in their evaluation and recommendation for renewal. Mr. Krain performed audits for both the Stetson and Olney renewal reviews. The OAS has a standard list of items that it reviews as part of the audits on all charter schools. (*Id.* at 90-96.)

506. As part of the renewal audit first for Stetson and then for Olney, the OAS reviewed the general ledgers, audits and other financial documents for the Charter Schools. Upon reviewing that information, the OAS became concerned about the manner in which money was

flowing among the ASPIRA-managed charter schools and from the charter schools to ASPIRA. (Tr. vol. 15, at 138.)

507. Mr. Krain testified about the various concerns that arose when the OAS performed the renewal audit for Stetson and Olney related to, among other things, the intercompany transfers and loans, the cross-collateralization of debt, the lack of internal controls, the failure to document transactions or payments, and the common board membership for these entities in light of the other issues. (Tr. vol. 3, at 99-141.)

508. The OAS found that there was no paperwork for the lending or the payments that had been made to and from ASPIRA or the other schools. There were no monthly invoices for the management fee. There were no loan agreements for the lending between the related entities. There were no purchase orders or other papers that would reflect the purpose of the transactions. Funds for the related entities were being moved by ASPIRA financial personnel by electronic transfers between banks. No checks were written. (Tr. vol. 3, at 106-117.)

509. Internal controls are procedures and methods to ensure the accuracy of accounting records to avoid theft, fraud, and to protect assets. The OAS found that there was a lack of internal controls at ASPIRA related to its financial management of the charter schools' finances. The internal controls that ASPIRA had in place did not include any role for any personnel employed by the charter schools, did not address who had check signing authority, did not address who had the authority to authorize wire transfers or electronic transfers of funds, did not address the role of the Charter Board in approving payments or expenditures, and did not contain any delineation of the relationship between ASPIRA and the charter schools it managed. (Tr. vol. 3, at 128-133; Ex. JE[O] 61, 104.)

510. Murray Rosenman had been ASPIRA's CFO until May 2016. Mr. Rosenman informed Mr. Krain that ASPIRA had issued debit cards but could not control the spending and had to pull them back. Debit cards were not addressed in the internal controls. (Tr. vol. 3, at 134-135.)

511. A subsidiary is an entity that is owned generally by a parent company, so the parent has a right to control the subsidiary. The Charter Schools are not subsidiaries of ASPIRA. ASPIRA is a management company, and each Charter School is a separate client of ASPIRA. (Tr. vol. 3, at 100:4-10, 102:20-24.)

512. Each charter school is its own corporation, with its own EIN. (*Id.* at 117-118.)

513. In 2015, Mr. Krain asked Mr. Rosenman to provide information from PNC Bank as to why PNC Bank needed all of the cross-collateralization from Olney, Stetson, Hostos and Pantoja. In response, on September 10, 2015, Mr. Rosenman supplied him with a letter from PNC Bank that states as follows: "PNC Bank underwrote credit facilities for ASPIRA Inc. of PA and its Affiliates under the arrangement that the bank was lending to one entity or co-obligated group." (Ex. JE[O] 101; Tr. vol. 3, at 122-125.) When asked if PNC's letter was a concern, Mr. Krain testified as follows:

[W]hat it comes down to is this: Each one of these charter schools stands on its own. It's a separate corporation. It's a separate charter. It's a separate group of kids. They get \$8,000 or \$26,000 or whatever the numbers are up to . . . of the special ed rate and the regular ed rate, and it's for those students that go to those schools. It's not for kids that go to Olney to pay for kids that go to De Hostos or guaranteed, or from Stetson to guarantee De Hostos, or from Pantoja to guarantee De Hostos, okay?

Now, what happens is when they cross-collateralize and you wind up with a forbearance agreement, or a potential foreclosure as was mentioned earlier today, you then can take down other kids that have nothing to do with the purchase of Cardinal Dougherty, and that is why each school has to stand alone and each – every charter school has to be able to be cut off, I'll say, if they don't make academic progress.

For example, if Olney should be shut down because of their academics, you can't shut them down because you're going to hinder the other three schools financially because of the loans. They have a potential of taking down other schools that are innocent, because De Hostos is the one that bought the building.

(Tr. vol. 3, at 126:4-127:8.)

514. Krain testified that the School District asked ASPIRA to take steps to stop the intercompany borrowing and to change the financing early on, but that was not done. He spoke to ASPIRA employees about these issues because, at that time, there were no financial people at the school-level for Olney or Stetson. (Tr. vol. 15, at 298:5:17; 304:16-305:3.)

515. As a Certified Public Accountant and auditor, Mr. Krain provided his professional opinion about the problems associated with the cross-collateralization and the intercompany loans:

My opinion is that each school stands on its own. It's a separate corporation, has a separate board that's supposed to have a fiduciary responsibility to that entity solely. So to get into why, like, for example, with ASPIRA and these schools, why one school is lending to another school or whatever the other issue is, to me, as an auditor and a CPA, it is an improper entity.

Like, in other words, for de Hostos to lend money to another charter school directly is – and there's five board members that are the same board members on both schools, you have to ask what is their fiduciary responsibility to the entity that's lending it and the entity that's borrowing it?

(Tr. vol. 15, at 312:14-313:5.)

Testimony of Gary Samms

516. The Charter Schools called Gary Samms to testify as an expert witness. (Tr. vol. 8, at 236:16-21.)

517. Mr. Samms served on the board of trustees of Collegium Charter School ("Collegium") in Exton, Pennsylvania for 8 years, from 2004 to 2012. (Tr. vol. 8, at 245:12-17, 253:12-15.) Collegium did not have a management company at the time he served on Collegium's board, and he has never advised any charter school regarding its relationship with

a management company. Collegium did not have any related entities other than a foundation. (Tr. vol. 8, at 262:8-263:3, 267:13-17.)

518. Mr. Samms has not served on the board of any charter school since 2012. He has never represented a charter school in a nonrenewal or revocation proceeding. (Tr. vol. 8, at 253:19-21, 258:16-21.)

519. Mr. Samms was involved in a bond deal at Collegium, in his capacity as the board president. At least four attorneys were involved in that transaction, including separate counsel for the charter school, the trustees, and the underwriters. (3/16/19 N.T. 248:18-249:3.)

520. Mr. Samms has never represented Olney or Stetson, or done any work for ASPIRA, aside from testifying as an expert witness in this matter. (Tr. vol. 8, at 263:4-10.)

521. Mr. Samms expressed his opinion that Mastery Charter Schools and Propel Charter Schools were set up in a fashion similar to the ASPIRA-managed charter schools. However, his opinion was not based upon any personal or reliable knowledge of how those entities are structured, as he has never represented those entities; never had any conversations with anyone at Mastery or Propel about their governance structure; doesn't know anything about how the Propel schools interact with each other; never reviewed the management agreement in place for the Mastery schools; has no familiarity with the internal controls in place for the Mastery schools or the manner in which any of the Mastery schools share services; only reviewed limited documents available to him, such as one set of board meeting minutes for the Mastery schools, three years of 990s for Mastery Charter High School and the Propel Federal Agreement; did not know if any Mastery schools have guaranteed any bond debt for any other Mastery schools; and did not know if any of the Mastery schools have loaned money to each other. (Tr. vol. 8, at 273:5-10; Tr. vol. 11, at 79:3-10, 80:20-82:7.) Mr.

Samms did not even know who Scott Gordon is, although he was clearly identified as the Chief Executive Officer of Mastery Schools for Mastery in the 990s that Mr. Samms reviewed. (Tr. vol. 11, at 81:18-23; Ex. Olney 155, at 1, 7.)

522. Mr. Samms admitted that there is no agreement in place between the ASPIRA-managed charter schools similar to the Propel Federation Agreement. (Tr. vol. 11, at 82:21-83:1.)

523. Mr. Samms also suggested that the fact that the bylaws submitted with the Applications for Olney and Stetson included a clause that the board members would be appointed by ASPIRA was significant, because the School District has been on notice of that language. However, he did not know that the Charter Schools had already taken steps to remove that language from the Bylaws. He did not know whether ASPIRA has stopped appointing board members for Olney; he did not know that the Bylaws had been amended to prohibit the cross collateralization of debt; and he did not know that Mr. Darden had already testified that he, in his capacity as the head of the CSO at the time the applications were filed, did not know about the bylaws or board composition structure. (Tr. vol. 8, at 276:13-20; Tr. vol. 10, at 215:14-23; Tr. vol. 11, at 78:2-22.)

524. With respect to the PNC Bank and Provident Bank transactions and forbearance agreements, Mr. Samms suggested that entry into those transactions was not in violation of Section 1714-A of the Charter School Law because he had not seen any indication that Olney or Stetson had spent any money on those transactions and the guarantees have not been executed upon by the lenders. (Tr. vol. 10, at 223-224.) Before rendering this opinion, he did not take any steps to investigate whether Olney or Stetson had incurred any attorneys' fees or

other types of fees as a result of the lending transactions, other than to review the documents that counsel had provided to him. (Tr. vol. 11, at 52:2-15.)

525. Mr. Samms also opined that Stetson received a benefit from the 2011 PNC Bank financing because of the \$50,000 line of credit that was extended to ASPIRA and Stetson as part of the financing. However, on cross-examination, he admitted that the line of credit letter was directed to ASPIRA, not Stetson; that the line of credit was jointly granted to ASPIRA and Stetson, not just to Stetson; that he did not know if Stetson ever received any money from the line of credit or if any part of the revolving line was ever used for Stetson expenditures; and that the Hostos line of credit was granted to Hostos alone, and not also to ASPIRA. Mr. Samms further admitted that the only benefit to Stetson from the PNC Bank financing was the line of credit, and that Olney did not receive any line of credit from the PNC Bank financing. (Tr. vol. 11, at 42:17-47:11.) Mr. Samms had no knowledge that Aspira Community Enterprises, which received a \$5 million loan from the PNC Bank financing, secured by the Charter Schools, ever provided any services to Olney or Stetson. (Tr. vol. 11, at 48:20-49:4.)

526. Olney never provided any evidence during the hearing that it received a line of credit or any benefit whatsoever from the PNC Bank financing.

527. Mr. Samms admitted that he did not see any evidence in the meeting minutes that the Olney or Stetson Charter Board voted to adopt any of the PNC Bank financial obligations, which in his view violated the Sunshine Act. (Tr. vol. 11, at 9:14-19, 12-14.) He testified: “[The actions of the public entity] have to take place at a public meeting. You’ve got to have a resolution to adopt this and it has to be a vote in public for obvious reasons, and that

has not been done in this case, so I think they would be unenforceable anyway.” (Tr. vol. 10, at 225:13-19.) He further testified on cross-examination:

Q. I believe during your direct testimony you rendered the opinion that the PNC-related agreements are the type of agreements that needed to be voted on in public; is that correct?

A. That’s correct.

Q. And your understanding or your opinion is based on the Sunshine Act, correct?

A. Correct.

Q. And the Sunshine Act would require any agreement of a public entity where there is the creation of an indebtedness or the agreement to take on any liabilities to be voted on in public, correct?

A. That’s my opinion.

Q. So it is your opinion, within a reasonable degree of professional certainty, that Olney Charter High School’s board violated the Sunshine Act when it failed to approve the PNC agreements in public?

A. Potentially.

Q. And when you say potentially, what is the basis for that?

A. I don’t know everything that occurred at that time. I don’t know what is not recorded. I don’t know if it happened, but it is not. So, I apologize, I’m not being vague, it is just based on what I know, that’s correct.

Q. Okay, based upon your reading of the board meeting minutes that have been supplied to you, that’s your opinion; is that correct?

A. That’s correct.

Q. And is it also your opinion, within a reasonable degree of professional certainty, that John B. Stetson Charter School’s board violated the Sunshine Act by failing to take action at a public meeting on those PNC Bank-related transactions?

A. Yeah, I think what I said in my report and my testimony was that it would be unenforceable because there was no resolution passed or a vote in public. So I don’t think I actually wrote they violated the Sunshine Act, but I would agree things could have been done procedurally differently. Absolutely.

Q. And if something would be voidable, in your opinion, it was because the Sunshine Act was not complied with?

A. Correct.

(Tr. vol. 11, at 14:7-16:7.)

528. Neither Olney nor Stetson produced any evidence to address the gap in Mr. Samms' knowledge—that Olney or Stetson's Board took action to approve the PNC Bank-related transactions or the Provident Bank-related transactions in public that might not have made it into the meeting minutes.

529. With respect to the Provident Bank transactions, Mr. Samms admitted that written consents should not have been used to approve the resolutions because of the Sunshine Act. (Tr. vol. 11, at 23:23-24:8.)

530. The Charter Board meetings closest to the signing of the April 21, 2016 Written Consents was on April 18, 2016. No attorney is identified in the minutes as being present at that meeting, and no executive session is identified in the minutes as being held. The April 18, 2016 meeting minutes do not reflect any discussion or action items regarding the Provident Bank transaction. At the next meeting following the April 21, 2016, Written Consents, which was on May 16, 2016, no counsel is listed as being in attendance at that meeting; there is no discussion or action items relative to the Provident Bank transaction; and an executive session is held only for the purpose of "personnel and contracts," with a contract section following in the board minutes unrelated to the Provident Bank transaction. (Ex. JE[O] 65, at 27; Tr. vol. 11, at 28:8-18, 30:1-31:23.)

531. Mr. Samms expert opinion constituted an admission that the Charter Schools violated the Sunshine Act by failing to approve the Provident Bank lending agreements in

public, and failing to approve any of the forbearance agreements related to the Provident Bank indebtedness. (Tr. vol. 11, at 31:21-32:5, 38:4-8, 39:9-24, 41:8-20.)

532. Mr. Samms agreed that the lending transactions with Provident Bank are creating an indebtedness for both of the Charter Schools. (Tr. vol. 11, at 32:12-17.)

533. Charter nonrenewal hearings are not an enforcement action of the various lending transactions. (Tr. vol. 11, at 41:21-42:1.)

534. With the lone exception of the June 11, 2013 meeting, the first Charter Board meeting where Robert O'Donnell (or any other counsel identified for any Charter School) is identified as in attendance was on May 24, 2016. (Ex. JE[S] 39, at 23; Ex. JE[O] 65, at 36.)

535. Through Mr. Samms' testimony, the Charter Schools are essentially asserting that they induced the lenders to provide the financial benefit that was provided to ASPIRA and some of its related entities (other than the Charter Schools) by executing all of the documents for the transaction and obtaining legal opinions from the same counsel that indicate all of the required steps have been taken; but that should not be held against them in these nonrenewal proceedings because they did so improperly, so the agreements are not enforceable.

536. Mr. Samms also opined that the standard of care for a nonprofit board would be to rely upon the advice of counsel and other professionals present at the board meetings. (Tr. vol. 8, at 290:13-291:1, 292:19-293:1; Tr. vol. 10, at 235:4-236:21.) However, the Charter Schools never presented any evidence that their Charter Board members relied on such advice by counsel or other professionals.

537. No one from Duane Morris or Fox Rothschild testified about the assumptions they made when they prepared the opinion letters addressed to PNC Bank and Provident

Bank, respectively. Mr. Samms did even not know if Duane Morris or Fox Rothschild ever sent their opinion letters to Olney or Stetson's Charter Board. (Tr. vol. 11, at 116:20-117:18.)

538. Further, Mr. Samms admitted that a nonrenewal proceeding under the Charter School Law is not the same as a breach of fiduciary duty or tort action where an element of intent is required as part of the cause of action. (Tr. vol. 11, at 62:19-64:4.)

539. Mr. Samms' knowledge about what Olney and Stetson's Charter Boards did or did not do is based solely on reading the minutes in the record and seeing that board counsel may have been present at meetings from time to time, and not based on any conversations with counsel for Olney, any member of the Charter Board or any of the professionals that he believes were relied upon by the Charter Board. He has never attended a meeting of Olney or Stetson's Charter Board, has never spoken to any members of Olney or Stetson's Charter Board, and has never spoken to any legal counsel from Fox Rothschild, Duane Morris, Buchanan Ingersoll or with Robert O'Donnell about Olney or Stetson. (Tr. vol. 11, at 5:7-6:24.)

540. Mr. Samms has no personal knowledge of whether any information or advice was provided at board meetings that is not reflected in the board minutes. (Id. at 8:5-18.)

541. Mr. Samms admitted that he could not say with certainty that the lawyers provided advice about the lending transactions. (Tr. vol. 10, at 237-238:3.)

542. Moreover, Counsel for the Charter Schools was asked if he was raising an advice of counsel defense, and responded only that that had not been determined. (Tr. vol. 10, at 45-48:3.)

543. According to the minutes in the record up to the date of the hearing, no action was taken at a public meeting to waive the attorney-client privilege so that any attorney representing Olney or Stetson could disclose any advice provided to either of them.

544. Nor was any other evidence presented to establish that Olney or Stetson relied on any advice of counsel or other professionals regarding the PNC Bank transaction, the Provident Bank transaction or the intercompany loans.

545. According to Mr. Darden, it was not a consistent practice to have legal counsel at board meetings until approximately the summer or early fall 2016. (Tr. vol. 7, at 97:10-15.)

546. Mr. Darden also admitted that an attorney's physical presence at a meeting does not mean that the attorney is providing legal counsel on every action item or topic that has arisen. (Tr. vol. 10, at 41:14-18.) If advice is given in executive session, that would not be reflected in meeting minutes. (Id. at 42:20-43:2.)

547. In his testimony, Mr. Samms raised the Auditor General's report about the ASPIRA-managed schools, suggesting that the Auditor General ("AG") was not critical about the ASPIRA management structure. (Tr. vol. 10, at 215:23-216:8, 222:18-23; Tr. vol. 11, at 65:17-66:4.)

548. This assertion by Mr. Samms was contradicted by the AG report itself. The report, entitled "Limited Procedures Engagement, ASPIRA-Managed Charter Schools," was issued in May 2018. (Ex. SD[O] 33; Ex. SD[S] 26.) It made eight separate Findings about the ASPIRA-managed charter schools, including the following:

Finding No. 1 – Lack of Governance – The Boards did not fulfill their duty to govern the Charter Schools allowing Aspira, Inc. to manage their public school funds without sufficient accountability.

Finding No. 2 – Declining Financial Position – Reduced revenues, persistent operating deficits, poor cash flow & overspent budgets caused the Charter

Schools' combined General Fund Balance to plummet from \$7.7 million in 2014 to \$(419,000) in 2016.

Finding No. 3 – Weak Management Agreements & Poor Record-Keeping – A poor organizational structure, weak management agreements, and lack of board oversight allowed Aspira, Inc. to control all school revenues and expenditures – including payments to itself – with little documentation to support charges to the schools.

Finding No. 4 – Risky Collateralization of Aspira, Inc.'s Delinquent Debt – The charter schools pledged revenues and net assets to secure Aspira, Inc.'s debt, and most of that debt was unpaid and past due.

Finding No. 7 – Executive Sessions Not in Compliance with Sunshine Act – The Charter School's Boards may have repeatedly failed to comply with the Sunshine Act when conducting their executive sessions.

Finding No. 8 – Financial Reporting Errors – The Charter School's Audited Financial Statements Contained Errors, Omissions, and Inconsistencies.

(Id.)

549. Mr. Samms conceded that the board members have fiduciary duties to each board on which they serve under the Nonprofit Law, the Charter School Law and the Ethics Act, meaning that the board members who serve on Olney's board have obligations and duties to Olney and the board members who serve on Stetson's board have obligations and duties to Stetson. He agreed that there are potential conflicts in the manner in which the Charter Boards are set up for the ASPIRA-managed charter schools, because the majority of the board members are the same on each board. (Tr. vol. 11, at 57:10-58:9.)

550. Mr. Samms testified that he was not retained as an expert to opine on Olney or Stetson's board members' compliance with the Ethics Act or avoidance of conflicts of interest, or on whether they complied with the non-profit law regarding actions by disinterested board members. (Tr. vol. 11, at 58:19-59:3.)

Audited Financial Statements

551. WithumSmith+Brown audited Olney's financial statements through the 2016-17 school year. (Ex. JE[O] 4-9.)

552. The audits for the following school years were issued after the December 31 deadline: (a) the audit for 2011-12 was issued on April 19, 2013; (b) the audit for 2012-13 was issued on January 20, 2014; (c) the audit for 2013-14 was issued on February 6, 2015; and (d) the audit for 2015-16 was issued on January 23, 2017. (Ex. JE[O] 5-8; Tr. vol. 15, at 5:10-6-8:1.)

553. The CSO did not begin issuing Notices of Deficiency to charter schools until 2016. (Tr. vol. 7, at 257:14-22.)

Fiscal Management

554. Mr. Yi, ASPIRA's Controller since August 2016, agreed that various financial metrics that the CSO reviewed for Olney are the same metrics that he uses, including cash on hand, change in assets, and net assets. (Tr. vol. 8, at 29, 32:15-24.)

555. Mr. Yi personally verified all of the financial data reported by the CSO in the ACE Reports, and agreed that the metrics were calculated properly and in the same manner in which they are calculated by ASPIRA. (Tr. vol. 8, at 34:20-35:15, 109:20-112:4; Ex. Olney 207.)

556. The financial metrics reported by the CSO are consistent with generally accepted standards of fiscal management and are recommended by the National Association of Charter School Authorizers. (Tr. vol. 3, at 5:7-15.)

557. Short-term financial health metrics include average days of cash on hand, total margin and current ratio. (Ex. JE[O] 31, at 17.)

558. Total margin is the percentage of the school's total annual revenue that it did not spend. As evaluated by the CSO, a total margin of at least 0% meets the standard and a total margin of less than -10% does not meet the standard. (*Id.*)

559. Current ratio is the ratio of short-term assets to short-term liabilities, and measures whether an entity has enough resources to pay its debt and obligations over the next year. (Tr. vol. 4, at 8:23-9:8.) As evaluated by the CSO, a current ratio of at least 1.1 meets the standard, and a ratio of less than 1 does not meet the standard. (Ex. JE[O] 31, at 17.)

560. Average days of cash on hand is the number of days a school could operate without receiving additional money. As evaluated by the CSO, less than 30 days of cash on hand does not meet the standard. (Ex. JE[O] 31, at 17.) According to Mr. Yi, the best practice standard "is always to target excellent (sic), but make sure we are at least an average." (Tr. vol. 8, at 111:11-15.) He described the average for the amount of cash a charter school should have on hand as 30-45 days of cash, with 60 days considered excellent, but said that is dependent on the entity's revenues, expenditures and accumulated position. (Tr. vol. 8, at 38:1-14.)

561. Long-term financial health metrics include net position and non-restricted fund balance. (Ex. JE[O] 31, at 18.)

562. Net position measures how much a school is worth as a percentage of its total annual revenue. As evaluated by the CSO, a net position of at least 16.66% meets the standard and a net position of less than 0% does not meet the standard. (Ex. JE[O] 31, at 18.)

563. Non-restricted fund balance also measures how much a school is worth as a percentage of its total annual revenue, but removes certain items such as property, equipment and long-term debt. As evaluated by the CSO, a value of at least 16.66% meets the standard and a value of less than 0% does not meet the standard. (Ex. JE[O] 31, at 18.)

564. The following information culled from Olney's independent audit reports is set forth in a table that the School District attached to its proposed findings of fact: Total Assets, Total Liabilities, Net Position, Total Revenue, Total Expenditures, Changes in Net Position, Days Cash on Hand, Net Position (% of Revenue), Total Margin (% of Revenue), Current Ratio, Fund Balance (% of Revenue), and Fund Balance for Fiscal Years 2012 through 2018.(Ex. HO[O] 112, at 124.)

565. Even after ASPIRA's new financial team came on board, according to Olney's audited financial statements, Olney engaged in deficit spending in the 2015-16, 2016-17 and 2017-18 school years. Olney overspent its budget in the area of business services and operations by over \$1.9 million for 2017-18, and overspent its budget in total by \$3,103,118. Similarly, in the 2016-17 school year, Olney overspent its budget by more than \$3.5 million; in the 2015-16 school year, Olney overspent its budget by over \$3.2 million. (Ex. JE[O] 8-10; Tr. vol. 8, at 124-128; Tr. vol. 4, at 12:14-23.) Overspending the budget cannot be attributed to any difference between expected and actual revenue.

566. Mr. Yi presented various financial metrics for Olney as of December 31, 2018, but those figures are not reliable because they are mid-year unaudited numbers. (Ex. Olney 207, at 2; Tr. vol. 8, at 45:13-23, 56:23-57:9.)

567. Mr. Darden took over the finance and accounting function at ASPIRA in May of 2016. He instituted a credit card policy in July of 2016 and restricted the use of credit cards to three individuals across the organization. (Tr. vol. 7, at 24:4-9.)

568. Mr. Darden corroborated Mr. Krain's testimony about the state of affairs with ASPIRA's fiscal management of the charter schools. Mr. Rosenman had been ASPIRA's CFO until May 2016. Mr. Darden agreed that there were concerns with the accounting practices that

had been in place under Mr. Rosenman, Mr. Rosenman's performance and the performance of his finance team. The concerns included lack of documentation for transactions, including the failure to issue invoices, payment of invoices and recording the transactions rather than netting those transactions against open payables; other issues with timely closing of books on a monthly basis; issues with documentation of journal entries in a way that would allow someone to fully trace them. (Tr. vol. 7, at 139:15-140:15.)

569. Mr. Darden testified that it is standard practice in accounting to provide a cash balance as of the end of the fiscal year. (Tr. vol. 7, at 142:15-19.) According to Mr. Darden, it would be difficult to manipulate the cash on hand number in any significant way. (Tr. vol. 7, at 14:7-17.)

570. Olney has always been paid in a timely manner by the School District. (Tr. vol. 7, at 14:18-20.)

571. Mr. Darden and Mr. Yi attempted to blame Olney's financial deficiencies on revenue losses without corresponding expenditure reductions, due to: (a) the reductions in the School Improvement Grants received by Olney until 2014-15, which were only awarded for a finite period of time known to Olney; (b) the State's decision (not the School District's) to stop reimbursing Olney for the rent reimbursement; (c) the loss of the subsidy for social security employee expenses in the 2011-12 school year and the PSERS employee expenses in the 2014-15 school year; and (d) downward trends in the School District's per pupil payment rates. However, all of these changes applied equally to all charter schools. (Tr. vol. 7, at 17:6-23, 154:6-18; Tr. vol. 8, at 48, 121:9-123:18.)

572. Mr. Yi suggested that write-offs of prior-years' receivables for the rental reimbursement subsidy decreased positive revenues for 2015-16, but that would not explain why

Olney overspent its budgeted expenditures in that year. (Tr. vol. 8, at 130:2-9; Tr. vol. 16, at 143:12-20.)

573. For 2016-17, Mr. Yi suggested that the special education student population had a need for additional services (*Id.* at 130:14-131:11), but never quantified what special education expenditures were a driver of the more than \$3 million in additional expenditures beyond the budgeted amounts. Olney's special education population percentage did not change significantly during the indicated years. Mr. Yi's explanation also fails to consider that Olney unilaterally began to enroll more students that year when it was not obligated to do so.

574. Olney receives a higher per pupil rate for all special education students, even ones who only have specific learning disabilities and do not need a more robust level of service. (Tr. vol. 8, at 157:10-19, 160:24-161:22.)

575. Olney never amended its budget to address any unanticipated expenditure or revenue impacts. (Tr. vol. 8, at 164:13-165:2.)

576. The School District has calculated and provided financial metrics for Olney since the issuance of the Renewal Recommendation Reports in the 2014-15 (Stetson) and 2014-15 and 2015-16 school years (Olney) and then through the issuance of the ACE Reports. (Ex. JE[O] 17, 30, 31; Ex. SD[O] 26; Ex. JE[S] 16, 24, 25; Ex. SD[S] 19; Ex. Stetson 22.)

577. Through its witnesses, Olney suggests that the School District underpaid it for the 2015-16, 2016-17 and 2017-18 school years due to rate changes that occurred mid-year. The following evidence addresses this issue:

- a. The School District filled out a PDE-363 form each year to calculate the rates payable to charter schools, based upon budgeted expenditures. (Ex. Olney 217-219; Tr. vol. 8, at 77:2-4.)

b. The School District pays all charter schools the same rates. (Tr. vol. 8, at 129:7-18.)

c. On April 18, 2016, the School District notified all “Charter School Operators,” not just the Charter Schools, that PDE had issued revised charter school per pupil payment rates for the School District on April 6, 2016 for the 2015-16 school year. Based upon the revisions made by PDE, the School District adjusted the per pupil payment rates downward by \$209.44 per regular education student and \$400.62 per special education student. (Ex. Olney 205.) As a result of these decreases, the cumulative loss of revenue to Olney was \$430,000 for 2015-16. (Tr. vol. 8, at 81:24-82:2.)

d. On March 21, 2017, the School District notified charter schools that PDE had released revised charter school per pupil payment rates for the 2016-17 school year for the School District on March 17, 2017. (Ex. Olney 190.) As a result of these decreases, the cumulative loss of revenue to Olney was approximately \$930,000 for 2016-17. (Tr. vol. 8, at 85:10-14.)

e. Olney has been repaid the reduced funds for the 2016-17 school year as a result of litigation filed in Commonwealth Court in the First Philadelphia case. (Ex. Stetson 272, at 119; Ex. Olney 295, at 121.)

f. If there had not been a mid-year rate reduction and Olney had continued to receive the higher rates in the years in question, it is not known whether Olney’s financial metrics would have changed, because that would depend on how Olney had used the funds. (Tr. vol. 7, at 287:17-288:10.)

g. Even if Olney had received the \$430,000 for the 2015-16 school year, its expenditures would have exceeded revenues by over \$2.7 million. (Tr. vol. 8, at 115:17-116:8.)

h. There was no information provided by Olney that the School District had reduced its per pupil rates for 2017-18 based on actual expenditures, as had happened in 2015-16 and 2016-17 due to the rate changes by PDE. Stetson did provide an exhibit showing that it received all of its payments for 2017-18. (Ex. Stetson 272, at 119.)

i. In addition to the budget vs. actual dispute, the Charter Schools apparently contend that the School District has taken deductions from the 363 form that are not proper. According to Mr. Yi, such deductions would equate to underfunding in the amount of approximately \$3 million for Stetson and \$6 million for Olney. (Ex. Olney 295, at 121; Ex. Stetson 272, at 69.)

j. As of the conclusion of the hearings on April 15, 2019, Olney had not submitted a subsidy redirection request to PDE for any amounts that it believed were due for the 2017-18 school year due to the 363 deduction issue, claiming that it had until April 25, 2019 to do so. Mr. Yi testified on April 15, 2019 that he was not aware if Olney intended to do so. (Tr. vol. 16, at 270:20-271:6.)

578. ASPIRA implemented several changes to the accounting and financial procedures and practices that had been in place. Most of those changes occurred after the SRC approved the nonrenewal resolution on December 17, 2017.

579. James Parsons and Karen Willis were hired in July or August 2018 as school-based finance officers. Both are employed by Stetson, and supposedly work under contracts with the other schools. (Tr. vol. 7, at 145:14-24.)

580. However, no such contracts were presented at the hearings. The Charter Board minutes from the meetings of June 29, 2018 and August 20, 2018 (there was no July board meeting) do not reflect approval of the hiring of Mr. Parsons or Ms. Willis, or approval of a contract with either of them. Nor do the Charter Board minutes reflect approval of any agreements among the Charter Schools to share any services provided by Mr. Parsons or Ms. Willis. (Ex. SD[O] 32, at 1-14.)

581. Mr. Parsons and Ms. Willis are both listed as attendees starting with the June 29, 2018 Charter Board meeting. (*Id.* at 1.)

582. The Charter Schools did not call Mr. Parsons or Ms. Willis to testify at the hearings.

583. On February 26, 2018, after the SRC approved the nonrenewal charges, the Charter Board approved a Financial Policy Manual to replace the internal controls that had been in use before. (Ex. Olney 95, Stetson 86, JE[O] 61, JE[O] 67, at 30; Tr. vol. 8, at 91:12-21, 97:18-21.)

584. The Financial Policy Manual addresses check signing authority for each Charter School and the process to obtain school-level approval for purchases and other matters. (Ex. Olney 95, Stetson 86.)

585. However, Mr. Yi admitted that the check signing and approval process in the Financial Policy Manual could continue to “cause confusion.” (Tr. vol. 8, at 102:9-104:24.)

586. The Charter Board only began approving purchases of \$5,000 or more for the Charter Schools after the approval of the Financial Policy Manual. The first Charter Board meeting where such steps were taken was on the February 26, 2018. (Ex. JE[O] 67, at 29-30; Tr. vol. 8, at 106:12-22.)

587. The Charter Board also approved a Position Control Policy at the February 26, 2018 meeting, which Mr. Yi said was needed because 2015-16 was a significant loss year and ASPIRA did not have a formal procurement process in place on positions. (Ex. JE[O] 67, at 30; Tr. vol. 16, at 162:10-164:13.)

588. After Mr. Parsons and Ms. Willis were hired in the 2018-19 school year, Ms. Willis drafted a Purchase Manual to provide the Charter Schools with more detailed instruction on how to conduct purchases, in order to separate the manner in which the Charter Schools purchase from how ASPIRA purchases. (Tr. vol. 16, at 157:4-158:13, 161:16-18.)

589. However, according to the Charter Board minutes, it does not appear that any manual related to purchasing was approved until January 28, 2019, when a document called an “Unauthorized School Purchases processes and policy” was apparently approved by the Charter Board, although there was no roll call vote. (Ex. SD[O] 32, at 35.)

590. The Charter Board did not authorize Mr. Parsons and Ms. Willis to have access to the Charter School’s bank accounts until the January 28, 2019 meeting. (Ex. SD[O] 32, at 33.)

591. According to the Charter Board minutes of October 29, 2018, Ms. Kirwin voiced her concerns to the Charter Board during the finance section of the agenda about how the 2018-19 budgets “were not inclusive of principal feedback and school academic and programmatic needs.” (Ex. SD[O] 32, at 24.)

592. Mr. Darden testified that, in early 2017, the Charter Board had established a Finance Committee that meets monthly. (Tr. vol. 7, at 149:2-4.) However, the Charter Board meeting minutes do not reflect establishment of a Finance Committee at any time during or since the 2016-17 school year, a fact that Mr. Darden admitted on cross-examination.

593. While the January 20, 2018 meeting minutes refer to something that will be discussed with the Finance Committee (Ex. JE[O] 67, at 20), the Charter Board did not take action to establish the committee or appoint its members. Nor do the minutes reference any reports by the Finance Committee to the Charter Board as a whole.

594. If the Finance Committee actually exists, it does not meet publicly, and its meetings are not advertised or posted on the Charter Schools' websites. (Tr. vol. 7, at 150-152.)

595. None of the Bylaws adopted by the Charter Board create a Finance Committee. According to the Bylaws, committees can only be created by the Charter Board: "The Board, by resolution adopted by a majority vote of the full Board, may designate from among its members and executive committee and one or more other committees, each of which, to the extent provided in the resolution, shall have the authority of the Board" (Ex. JE[O] 54, at 4; see also, Ex. JE[O] 51-53.)

596. The Charter Board meeting minutes do not reflect Olney taking action to approve monthly invoices for ASPIRA. Nor is the Finance Committee taking actions with respect to payments to ASPIRA. (Tr. vol. 7, at 153:10-154:5.)

597. On June 12, 2012, the OAS issued an Enrollment/Attendance review report covering the period of September 1, 2011 through June 15, 2012, regarding students with at least ten consecutive unexcused absences and whether Olney had been removing those students from its rolls in a timely fashion for billing purposes. The OAS found that Olney had been overpaid by \$359,366.68 for the 2011-12 school year because students had not been timely removed from the rolls. This amounts were then recovered from Olney. (Ex. JE[O] 102.)

Lease Agreement

598. Olney is only approved to operate out of the Duncannon address. It was never approved to locate any students or programs elsewhere. (Tr. vol. 3, at 21:12-16.)

599. A Lease Agreement (“Lease”) was entered with an effective date of October 19, 2011 between ACE/Dougherty and Olney for the lease of 25,000 square feet on the first floor of 6301 North 2nd Street, Philadelphia, which is the property where Hostos and Cyber are located. (Ex. JE[O] 103; Tr. vol. 7, at 27:11-17; Tr. vol. 11, at 57:3-6.)

600. The Lease is for a ten-year term with a “Minimum Rent” identified as “the Product of 1.2 multiplied by 12% of the Landlord’s Debt Service on the Bonds.” The Lease is triple net, in this case meaning the Tenant is responsible for paying “12% of all costs, expenses and obligations of every kind related to the Property which may arise or become due during the term of the lease, including, without limitation, all taxes, utilities, casualty and liability insurance premiums and repair, maintenance and replacement expenses”. (Ex. JE[O] 103, at 3-4.)

601. The Lease Agreement is subject to a Subordination and Attornment Agreement between PNC Bank, ACE/Dougherty and Olney to ensure that the lease is subordinate to the PNC Bank loan documents. (Ex. JE[O] 98.) In addition, the Subordination and Attornment Agreement require Olney to pay all amounts due under the Lease directly to PNC Bank if PNC Bank delivers a notice that default has occurred under the Loan Documents. (*Id.* at , ¶ 2.)

602. Mr. Krain questioned why a charter school would pay 120% of its portion of the debt service as rent under a triple net lease, the effect of which would be to shift substantial amounts of money to ACE/Dougherty without any apparent justification. (Tr. vol. 3, at 138-139, 154:7-155:1.)

603. Olney presented no evidence that it had its own legal counsel to negotiate the Lease Agreement or anything related to the PNC Bank guarantees, when they were entered into

in October 2011. The Olney Board meeting minutes from the 2011-12 school year do not reflect the retention of any legal counsel for Olney or the adoption of any engagement letter for legal services. (Ex. JE[O] 3.)

604. Hostos is one of the smaller charter schools managed by ASPIRA. ACE/Dougherty and ASPIRA bought the Dougherty building for Hostos to be located there. Due to the size of the building and the cost of the bonds and debt services to PNC Bank, ACE/Dougherty needed more tenants in the building to be able to meet the debt service. Hostos alone could not carry the debt service. (Tr. vol. 3, at 121-122.)

605. In October 2011, Olney began operating the Excel Academy out of the Hostos building, which is a program for overage under-credited students.

606. Mr. Darden was aware of Olney operating the Excel Academy in the 2011-12 school year, when he was still with the CSO, but he did not recall being aware of where the program was located in 2011. Nor did he know about the lease agreement related to the operation of that program out of the Hostos building or what Olney's reasoning was to enter into the lease of the facility to pay rent of 1.2 multiplied by 12%. (Tr. vol. 7, at 28:15-23, 31:8-13, 167:1-5.) Mr. Darden believes, however, that the contract between Camelot and Olney to run the Excel Academy required a certain amount of students, so the space needed to accommodate that enrollment. (Tr. vol. 7, at 32:20-33:9.)

607. In the 2013-14 timeframe, Mr. Darden testified that the Excel Academy operated out of the Hostos building because of heat issues in the basement at Olney. Once the heat was repaired in the 2015-16 school year, the Excel Academy moved to Olney despite the ten-year term of the Lease. Hostos did not pay rent to ACE/Dougherty when the program did not operate out of Olney. (Tr. vol. 7, at 34:13-35:17.)

608. Mr. Darden agreed that if space was needed for the Excel Academy due to facility issues at Olney, Olney was not required to lease space from ACE/Dougherty at the Dougherty building. Olney could have obtained another facility for the program. (Tr. vol. 7, at 170:19-171:2.)

609. The ten-year Lease Agreement has not been terminated or amended to date and remains in place pursuant to the Loan Documents from the PNC Bank transaction. PNC Bank could exercise its rights under the Subordination and Attornment Agreement to collect rent from Olney, even if Olney is not currently renting space in the building.

Payments to PSERS

610. Olney's employees participate in the Public School Employees Retirement System ("PSERS"). (Ex. JE[O] 108, ¶ 5.) ASPIRA, as Olney's management company, oversees the PSERS payments for Olney's employees. (Tr. vol. 6, at 286:16-20.)

611. During the 2012-13 school year, PDE withheld \$34,615.42 from the School District's state payments to cover employer and/or employee contributions that Olney had not paid to PSERS. (Ex. JE[O] 108, ¶ 7.)

612. During the 2014-15 school year, PDE withheld \$13,301.86 from the School District's state payments to cover employer and/or employee contributions that Olney had not paid to PSERS. (Ex. JE[O] 108, ¶ 8.)

613. The School District recovered the amounts that PDE withheld by withholding equivalent amounts from Olney's monthly per-pupil charter payments. These withholdings from per-pupil payments are itemized in joint exhibits. (Ex. JE[O] 59-60.)

614. These were the only payments missed by Olney.

Other Asserted Defenses

Mastery Charter Schools

615. In an effort to legitimize the intertwined structure and practices of the ASPIRA-managed schools, the Charter Schools asserted throughout the hearing process that they are similar to the structure and practices of charter schools operated by Mastery Charter Schools. However, there are significant differences between the structure and practices of the ASPIRA schools and the structure and practices of the Mastery schools.

616. Mastery Charter High School (“MCHS”) serves as the management company for the other Mastery charter schools and receives a management fee from them for its services. (Tr. vol. 1, at 61:13-16, 89:16-23; Tr. vol. 16, at 337:19-23.)

617. MCHS’ board is distinct from the unified board that operates the other Mastery charter schools. (Tr. vol. 1, at 61:13-62:1.)

618. The other charter schools managed by MCHS do not have any other contractual obligations with each other and are not operating in the same manner as the charter schools in the ASPIRA management network. (Tr. vol. 1, at 61:13-62:6, 81.)

619. To the best of the Mr. Chao’s and Krain’s knowledge, the Mastery charter schools are not loaning money to each other, and have not pledged security interests in debt or other financing transactions entered into by another one of the charter schools. (Tr. vol. 1, at 81:8-82:2, 89:16-90:5; Tr. vol. 3, at 210:11-212:8; Tr. vol. 16, at 72:11-74:1.)

620. According to Mr. Chao, whether or not it would be problematic for charter schools within the same management system to purchase services from one another would depend on the details of the arrangement. (Tr. vol. 1, at 62:8-63:7.)

621. If the Mastery schools' arrangements or actions had been similar to those of the ASPIRA-managed charter schools, the CSO would have flagged those issues. (Tr. vol. 1, at 82:10-14.)

622. Mr. Krain has reviewed the general ledger, 990s and other financial documents from the Mastery schools as part of the OAS's review that takes place at the time of each charter school's renewal. He conducted that review with the same expectations and standards as when he reviewed the ASPIRA schools' transactions, and he did not identify any concerns with Mastery's structure. (Tr. vol. 16, at 81:22-82:23, 94:8-12.) There were no deposits going from one Mastery-operated charter school to another, according to the general ledgers of those schools. (Tr. vol. 16, at 94:23-95:1.)

623. The flow-through items listed on MCHS' 990s are grants that are flowing from MCHS to the various MCHS-managed schools. (Ex. Olney 153-155; Ex. Stetson 151-153; Tr. vol. 16, at 78:9-81:11.)

624. MCHS charges a flat percentage as its management fee, without adding any additional direct service costs or staffing costs. (Tr. vol. 16, at 87:19-88:7.)

625. Given these distinctions, the School District's criticisms of the Charter Schools' structure, operations and financial transactions are not undermined by or inconsistent with the absence of similar criticisms regarding the Mastery schools.

Hostos and Pantoja

626. The Charter Schools also sought to legitimize the intertwined structure and practices of the ASPIRA-managed schools by noting that the CSO recommended a renewal with conditions for Hostos and Pantoja, instead of nonrenewal. However, there are significant

differences between the charter requirements and performance of Hostos and Pantoja and the charter requirements and performance of Olney and Stetson.

627. Hostos and Pantoja both serve students kindergarten through eighth grade.

628. Hostos and Pantoja's charter requirements are different because they are not Renaissance charter schools. (Tr. vol. 5, at 208:15-17.)

629. Hostos and Pantoja also have better academic performance than Olney and Stetson, while also serving high percentages of historically underperforming students.

630. In the 2015-16 school year, Hostos had the following demographics: 88% Hispanic students; 33% special education students; and 14% ELLs. (Ex. Stetson 215, at 2; Ex. Olney 234, at 2.)

631. Nevertheless, in 2014-15 and 2015-16, Hostos' aggregate proficiency scores in math, ELA and science exceeded the aggregate scores of School District schools, peer schools and charter schools. (Ex. Stetson 215, at 4-6; Ex. Olney 234, at 4-6; Ex. Stetson 214, at 4-6; Ex. Olney 233, at 4-6.)

632. In the 2015-16 school year, Pantoja had the following demographics: 90% Hispanic students; 28% special education students; and 14% ELLs. (Ex. Stetson 211, at 2; Ex. Olney 230, at 2.)

633. Nevertheless, in 2014-15 and 2015-16, Pantoja's proficiency scores in math, ELA and science also exceeded the aggregate scores of School District schools and peer schools, with the sole exception of math in 2015-16. (Ex. Stetson 210, at 4-6; Ex. Olney 229, at 4-6; Ex. Stetson 211, at 4-6; Ex. Olney 230, at 4-6.)

634. The CSO has recommended Hostos and Pantoja for renewal with conditions. However, neither school has been renewed by the SRC or the BOE, and no charters have been signed. (Tr. vol. 5, at 208:2-14.)

635. In June 2018, the CSO sent Pantoja and Hostos proposed charter agreements that contain 13 “conditions for renewal” addressing the findings in their renewal reports. (Ex. Olney 237, 238; Ex. Stetson 218, 219.) The Charter Schools did not present any evidence that Pantoja and Hostos have agreed to the conditions, or that the conditions have been met.

636. Under these circumstances, the CSO’s recommendation of nonrenewal for Olney and Stetson is not undermined by or inconsistent with its slightly better recommendation for Pantoja and Hostos.

Richard Allen Preparatory Charter School

637. The Charter Schools also contended that the CSO treated them differently than Richard Allen Preparatory Charter School (“Richard Allen”). However, there are significant differences between Richard Allen’s circumstances and Olney and Stetson’s circumstances.

638. Richard Allen’s charter requirements are different because it is not a Renaissance charter school. (Tr. vol. 5, at 211:1-7.)

639. Richard Allen did not have the same financial issues as Olney and Stetson. (Tr. vol. 5, at 211:8-16.) The only note in the financial stewardship section of the CSO’s renewal report for Richard Allen involves prepayment of rent to its component unit for the building that Richard Allen uses as its own facility. (Tr. vol. 5, at 223:9-20.)

640. The CSO recommended Richard Allen for a one-year renewal with conditions during the 2014-15 school year. Thereafter, the CSO recommended Richard Allen for nonrenewal.

641. Given the distinctions described above, the CSO's recommendation of nonrenewal for Olney and Stetson is not undermined by or inconsistent with its recommendations for Richard Allen.

Minority-Led Charter Schools Briefing

642. After the hearings ended, the Charter Schools requested belated admission of a PowerPoint presentation dated March 29, 2019 entitled Minority-Led Charter Schools Briefing ("Presentation"). (Ex. Olney 300; Ex. Stetson 277.)

643. The Presentation shows the number of charter schools that have operated in the School District since 2007-08, including the number of schools that have been opened and closed, and the number of Renaissance charter schools. (*Id.* at 4.)

644. The Presentation also provides some information from a third-party entity, the Center for Education Reform, containing national data from 2011 regarding the primary reasons why charter schools close. That same slide states: "All charter schools that have closed in Philadelphia were independently operated. Many charter schools led by Black and Latino CEOs are independently operated." (*Id.* at 5.)

645. The Charter Schools are not independently operated, as described in the Presentation. To the contrary, they are managed by ASPIRA.

646. The Presentation also provides data about the charter schools in Philadelphia that have closed since the 2014-15 school year, whether they were minority-led schools, and the primary reason for the closure. Out of the ten charter schools that closed since 2014-15, 60% were "minority-led." (*Id.* at 6.) The Presentation does not state how that percentage compares to the overall percentage of minority-led charter schools in Philadelphia.

647. Additional charter schools have entered into surrender agreements following nonrenewal recommendations. A surrender agreement reflects the charter school's ability to remain in operation but with specific targets that must be met. Of the four charter schools that have done so, 75% were minority-led. (*Id.* at 7.) The Presentation also does not state how that percentage compares to the overall percentage of minority-led charter schools in Philadelphia.

648. Five charter schools are in the midst of nonrenewal proceedings, including the Charter Schools. Of those five charter schools, 80% are minority-led. (*Id.* at 8.) The Presentation also does not state how that percentage compares to the overall percentage of minority-led charter schools in Philadelphia.

649. The Presentation notes that there is not a dedicated non-profit charter support organization in Philadelphia, unlike in other major cities, to provide technical assistance and guidance to charter schools. (*Id.* at 9.) However, in this case, the Charter Schools have access to ASPIRA and its resources, along with the Central Office team now employed by Stetson.

CONCLUSIONS OF LAW

Applicable Legal Principles

1. Charter schools are required to comply with the Charter School Law ("CSL"), *See* 24 P.S. § 17-1701-A, *et seq.*

2. Olney is a charter school operating pursuant to the CSL. *See* 24 P.S. § 17-1701-A *et seq.*

Revocation Procedure

3. The CSL authorizes nonrenewal of a charter on any of the following grounds:

(1) One or more material violations of any of the conditions, standards or procedures contained in the written charter signed pursuant to section 1720-A.

(2) Failure to meet the requirements for student performance set forth

in 22 Pa. Code Ch. 5 (relating to curriculum) or subsequent regulations promulgated to replace 22 Pa. Code Ch. 5 or failure to meet any performance standard set forth in the written charter signed pursuant to section 1716-A.

(3) Failure to meet generally accepted standards of fiscal management or audit requirements.

(4) Violation of provisions of this article [the CSL].

(5) Violation of any provision of law from which the charter school has not been exempted, including Federal laws and regulations governing children with disabilities.

(6) The charter school has been convicted of fraud.

See 24 P.S. § 17-1729-A(a) (footnotes omitted).

4. The local board of school directors “may” choose not to renew a charter on any of these grounds. *See* 24 P.S. § 17-1729-A(a).

5. The local board of school directors “shall conduct a comprehensive review prior to granting a five (5) year renewal of the charter.” 24 P.S. § 17-1728-A(a).

6. Before deciding not to renew a charter, the local board of school directors must give notice to the governing board of the charter school, stating the grounds for such action with reasonable specificity, and must give reasonable notice of the date on which a public nonrenewal hearing will be held. 24 P.S. § 17-1729-A(c).

7. The local board of school directors must conduct a hearing, present evidence in support of the grounds for nonrenewal as stated in its notice, and give the charter school a reasonable opportunity to offer testimony before taking final action. *See* 24 P.S. § 17-1729-A(c).

8. Under the CSL, charter nonrenewal hearings are to be conducted in accordance with the Local Agency Law. *See* 24 P.S. § 17-1729-A(c); 2 Pa. C.S. Ch.5 Subch. B.

9. At the hearing, the local board of school directors has the burden to present sufficient evidence to substantiate its reasons for nonrenewal. 24 P.S. § 17-1729-A(c); *Delaware*

Valley Charter High Sch. v. School Dist. of Phila., CAB No. 2016-06, at 23 (June 8, 2017) (“*Delaware Valley*”).²⁰

10. The asserted grounds must be proven by “a preponderance of the evidence.” *See Delaware Valley*, at 27; *Imani Educ. Circle Charter Sch. v. School Dist. of Phila.*, CAB No. 2014-08 at 25 (May 11, 2016) (“*Imani*”); *Graystone Acad. Charter Sch. v. Coatesville Area Sch. Dist.*, CAB No. 2012-01, at 38 (Aug. 2, 2013) (“*Graystone (CAB)*”). This burden is satisfied if “the evidence demonstrates a fact is more likely to be true than not to be true, or if the burden were viewed as a balance scale, the evidence in support of the proponent’s case must weigh slightly more than the opposing evidence.” *Id.*

11. In addition, “the reasons for terminating a charter must be compelling in the sense that a charter school’s violations of the terms of its charter or the CSL are significant, material and fundamental.” *Renaissance Charter Sch.*, CAB No. 2008-07, at 3 n.3 (Apr. 14, 2009) (“*Renaissance Charter*”).

12. The local board of school directors must take formal action regarding revocation of a charter at a public meeting pursuant to the Sunshine Act, 65 Pa. C.S. §§ 701-716, after giving the public 30 days to submit comments to the board. *See* 24 P.S. § 17-1729-A(c).

13. The SRC and the BOE have complied with all of these procedural requirements of the CSL to date, and will comply with the final requirement by voting on this matter at a public meeting.

14. In addition, the essential elements of due process in an administrative matter are notice of governmental action and an opportunity to be heard to challenge that action. *Pocono*

²⁰ All citations to decisions of the State Charter School Appeal Board (“CAB”) are made with reference to their docket number, referenced as “CAB No. [number] ([date]).” These decisions are publicly available on PDE’s website at <http://www.education.pa.gov/K-12/CharterSchools/Pages/CAB-Decisions.aspx>.

Mountain Charter Sch., Inc. v. Pocono Mountain Sch. Dist., 88 A.3d 275, 285-86 (Pa. Cmwlth. Ct. 2014); *Barasch v. Pennsylvania Pub. Util. Comm’n*, 546 A.2d 1296, 1305 (Pa. Cmwlth. Ct. 1988).

15. These elements of due process have been satisfied in this proceeding.

Purpose of Charter Schools

16. “The core purpose of the [CSL] is to improve students’ education.” *New Hope Acad. Charter Sch. v. School Dist. of York*, 89 A.3d 731, 739 (Pa. Cmwlth. Ct. 2014) (*New Hope (Cmwlth.)*”).

17. The intent of the General Assembly in enacting the CLS was, among other things, to establish and maintain schools that improve pupil learning, to increase learning opportunities for all pupils, and to hold charter schools accountable for meeting measurable academic standards. *See* 24 P.S. § 17-1702-A; *New Hope (Cmwlth.)*; *see also*, *Discovery Charter Sch. v. School Dist. of Phila.*, 166 A.3d 304, 316 (Pa. 2017).

18. “[A]ll statutes that are part of the Public School Code must be interpreted to permit school districts to take actions necessary to provide students a good education” because “the fundamental purpose of the Public School Code is to provide ‘a thorough and efficient system of public education’ in accordance with Article III, Section 14 of the Pennsylvania Constitution.” *New Hope (Cmwlth.)*, at 739 (citations omitted).

19. “The [CSL] is a part of the Public School Code and must be interpreted to carry out the purpose of providing a quality education.” *Id.* (citing *Northside Urban Pathways Charter Sch. v. State Charter Sch. Appeal Bd.*, 56 A.3d 80, 83 (Pa. Cmwlth. Ct. 2012)).

Binding Effect of a Charter

20. “Upon approval of a charter application under section 1717-A, a written charter shall be developed which shall contain the provisions of the charter application 24 P.S. § 17-1720-A. This written charter . . . shall act as legal authorization for the establishment of a charter school . . . [and] shall be legally binding on both the local board of school directors of a school district and the charter school’s board of trustees.” *Id.*

21. “[T]he information in the charter school application is intrinsic to the charter and is essentially the heart of the charter school” because “the charter school application is required by the Charter School Law to be extremely detailed and specifically identify the manner in which the charter school will operate (see 24 P.S. § 17-1719-A) and because the information contained in the charter school application eventually becomes part of the charter itself” *Thurgood Marshall Acad. Charter Sch.*, CAB No. 2001-5, at 11 (Jan. 15, 2002).

22. “When a charter is granted by a local board of school directors, the charter school is required to comply with the terms and conditions of the charter, as well as the information contained in the charter school application, which is incorporated into the charter.” *Truebright Science Acad. Charter Sch. v. School Dist. of Phila.*, CAB No. 2013-11, at 15 (Jan. 8, 2015) (“*Truebright (CAB)*”) (citing 24 P.S. §§ 17-1720-A, 17-1729-A(a)(1)).

23. Accordingly, the “written charter shall be legally binding on both the local board of school directors of a school district and the charter school’s board of trustees.” *Discovery Charter Sch.*, at 319 (quoting 24 P.S. § 17-1720-A(a)).

Operation of Charter Schools

24. “A charter school shall be accountable to the parents, the public and the Commonwealth, with the delineation of that accountability reflected in the charter.” 24 P.S. § 17-1715-A(2).

25. “A charter school established under this act is a body corporate and shall have all powers necessary or desirable for carrying out its charter, including, but not limited to, the power to: . . . (4) Receive and disburse funds for charter school purposes only” 24 P.S. § 17-1714-A(a)(4).

26. “The board of trustees of a charter school shall have the authority to decide matters related to the operation of the school, including, but not limited to, budgeting, curriculum and operating procedures, subject to the school’s charter.” 24 P.S. § 17-1716-A(a).

27. Moreover, “[t]he board shall have the authority to employ, discharge and contract with necessary professional and nonprofessional employees subject to the school’s charter and the provisions of this article.” *Id.*

28. In addition, “[t]he board of trustees shall determine the level of compensation and all terms and conditions of employment of the staff except as may otherwise be provided in this article.” 24 P.S. § 17-1724-A(a).

29. “A charter school shall not discriminate in its admission policies or practices on the basis of intellectual ability . . . or athletic ability, measures of achievement or aptitude, status as a person with a disability, proficiency in the English language or any other basis that would be illegal if used by a school district.” 24 P.S. § 17-1723-A(b)(1).

English Language Learners

30. “A school entity shall administer a home language survey to all students seeking first time enrollment in its schools in accordance with the requirements of the United States Department of Education’s Office for Civil Rights.” 22 Pa. Code § 11.11(e).

31. In addition:

Every school district shall provide a program for each student whose dominant language is not English for the purpose of facilitating the student’s achievement of English proficiency and the academic standards 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.

32. “Each State plan shall demonstrate that the State has adopted English language proficiency standards that – (i) are derived from the 4 recognized domains of speaking, listening, reading, and writing; (ii) address the different proficiency levels of English learners; and (iii) are aligned with the challenging State academic standards.” 20 U.S.C. § 6311(b)(1)(F).

33. “Each State plan shall demonstrate that local educational agencies in the State will provide for an annual assessment of English proficiency of all English learners in the schools served by the State educational agency.” 20 U.S.C. § 6311(b)(2)(G)(i).

34. English learners who have been enrolled in a school in the United States for less than 12 months may be excluded from one administration of the reading and language arts assessment required under ESSA or the results of assessments taken by such English learners may be excluded from the results reported for that school, in the discretion of the State. 20 U.S.C. § 6311(b)(3)(A).

Student Conduct

35. Prior to admitting a student, a charter school must obtain “a sworn statement or affirmation stating whether the pupil was previously or is presently suspended or expelled . . . for an act or offense involving weapons, alcohol or drugs or for the wilful infliction of injury to another person or for any act of violence committed on school property.” If the student was suspended or expelled, “[t]he registration shall include the name of the school from which the student was expelled or suspended for the above-listed reasons with the dates of expulsion or suspension and shall be maintained as part of the student’s disciplinary record.” 24 P.S. § 13-1304-A(a).

36. “The governing board has the authority to make reasonable and necessary rules governing the conduct of students in school. The rulemaking power, however, is not unlimited; it must operate within statutory and constitutional restraints. A governing board has only those powers that are enumerated in the statutes of the Commonwealth, or that may reasonably be implied or necessary for the orderly operation of the school.” 22 Pa. Code § 12.3(a).²¹

37. “Each governing board shall adopt a code of student conduct that includes policies governing student discipline and a listing of students’ rights and responsibilities *as outlined in this chapter.*” 22 Pa. Code § 12.3(c) (emphasis added). “This conduct code shall be published and distributed to students and parents or guardians. Copies of the code shall also be available in each school library.” *Id.*

38. The State Board of Education has specified due process requirements for all students to be suspended or expelled from school. 22 Pa. Code §§ 12.6 and 12.8. Those requirements are applicable to charter schools. 24 P.S. § 17-1732-A(b).

²¹ Charter schools are subject to 22 Pa. Code Ch. 12, pursuant to 24 P.S. § 17-1732-A(b).

39. Section 12.6 of the State Board of Education provides in pertinent part as follows:

(b) Exclusion from school may take the form of suspension or expulsion.

* * *

(2) Expulsion is exclusion from school by the governing board for a period exceeding 10 school days and may be permanent expulsion from the school rolls. Expulsions require a prior formal hearing under § 12.8.

(c) During the period prior to the hearing and decision of the governing board in an expulsion case, the student shall be placed in his normal class except as set forth in subsection (d).

(d) If it is determined after an informal hearing that a student's presence in his normal class would constitute a threat to the health, safety or welfare of others and it is not possible to hold a formal hearing within the period of a suspension, the student may be excluded from school for more than 10 school days. A student may not be excluded from school for longer than 15 school days without a formal hearing unless mutually agreed upon by both parties. Any student so excluded shall be provided with alternative education, which may include home study.

22 Pa. Code § 12.6.

40. Section 12.8 of the State Board of Education regulations provides as follows:

A formal hearing is required in all expulsions actions. This hearing may be held before the governing board or an authorized committee of the board, or a qualified hearing examiner appointed by the board. When a committee of the board or a hearing examiner conducts the hearing, a majority vote of the entire governing board is required to expel a student.

22 Pa. Code § 12.8(b).

41. With respect to these nonrenewal proceedings, the term "governing board" in

Chapter 12 means "the board of trustees of a charter school." 22 Pa. Code § 12.16.

The Ethics Act

42. Pennsylvania's Public Official and Employee Ethics Act ("Ethics Act") requires public officials to file a statement of financial interests (SOFI) by May 1 of each year. 65 Pa. C.S. § 1104(a).

43. Moreover, “No public official shall be allowed to take the oath of office or enter or continue upon his duties, nor shall he receive compensation from public funds, unless he has filed a statement of financial interests as required by this chapter.” 65 Pa. C.S. § 1104(d).

44. This requirement applies to trustees of a charter school, because they are “public officials.” 24 P.S. § 17-1715-A(11).

45. In their SOFIs, public officials must disclose, among other things, “[a]ny office, directorship or employment of any nature whatsoever in any business entity.” 65 Pa. C.S. § 1105(b)(8).

46. “Because public confidence in government can best be sustained by assuring the people of the impartiality and honesty of public officials, this chapter shall be liberally construed to promote complete financial disclosure as specified in this chapter.” 65 Pa. C.S. § 1101.1(a).

47. If a Charter Board member fails to file a SOFI as and when required, he or she must be removed for violating the Ethics Act. 65 Pa. C.S. § 1104(d).

48. A Charter Board member’s failure to file a SOFI as and when required constitutes a violation of law, but that violation cannot be imputed to Olney because the filing is an individual responsibility, not the corporate responsibility of a charter school. *Reading Sch. Dist. v. I-LEAD Charter Sch.*, ___ A.3d ___, 2019 WL 1179160, *13 (Pa. Cmwlth. Ct., Mar. 14, 2019).

49. However, a Charter Board member’s failure to file a SOFI as and when required may be a proper basis for non-renewal or revocation of a charter when considered in the aggregate with other violations and issues. *Renaissance Charter*, at 13-14; *Khepera Charter Sch. v. School Dist. of Phila.*, CAB No. 2018-01, 48-49 (Dec. 17, 2018).

50. Moreover, the School District can consider the failure to file SOFIs as a governance issue when deciding whether a charter should be renewed. *Reading Sch. Dist.*

51. The failure to ensure that SOFIs are filed as and when required may also constitute grounds for nonrenewal as a failure to comply with a charter requirement. *See* 24 P.S. § 17-1729-A(a)(1).

52. Other Ethics Act violations by a charter school may also serve as a basis for charter school nonrenewal. *Reading Sch. Dist.*

53. In addition to the SOFI requirement, the Ethics Act states that “[n]o public official or public employee shall engage in conduct that constitutes a conflict of interest.” 65 Pa. C.S. § 1103. For this purpose, a “conflict of interest” is defined as:

Use by a public official or public employee of the authority of his office or employment or any confidential information received through his holding public office or employment for the private pecuniary benefit of himself, a member of his immediate family or a business with which he or a member of his immediate family is associated”

65 Pa. C.S. § 1102.

54. In addition, the Ethics Act provides that:

No public official or public employee . . . or any business in which the person . . . is associated shall enter into any contract valued at \$500 or more with the governmental body with which the public official or public employee is associated . . . unless the contract has been awarded through an open and public process, including prior public notice and subsequent public disclosure of all proposals considered and contracts awarded. In such a case, the public official or public employee shall not have any supervisory or overall responsibility for the implementation or administration of the contract.

65 Pa. C.S. § 1103(f).

55. It also provides as follows:

Any public official or public employee who in the discharge of his official duties would be required to vote on a matter that would result in a conflict of interest shall abstain from voting and, prior to the vote being taken, publicly announce and disclose the nature of his interest as a public record in a written memorandum

filed with the person responsible for recording the minutes of the meeting at which the vote is taken, provided that whenever a governing body would be unable to take any action on a matter before it because the number of members of the body required to abstain from voting under the provisions of this section makes the majority or other legally required vote of approval unattainable, then such members shall be permitted to vote if disclosure are made as otherwise provided herein.

65 Pa. C.S. § 1103(j).

56. The CSL similarly provides as follows:

A person who serves as an administrator for a charter school shall not receive compensation from another charter school or from a company that provides management or other services to another charter school. The term ‘administrator’ shall include the chief executive officer of a charter school and all other employees of a charter school who by virtue of their positions exercise management or operational oversight responsibilities. A person who serves as an administrator for a charter school shall be a public official under 65 Pa. C.S. Ch. 11 (relating to ethics standards and financial disclosure).

24 P.S. § 17-1715-A(12).

57. A charter board’s failure to discuss or consider the terms of management agreements, leases or contracts with the charter school’s management company through an open and public process violates the Ethics Act and the Nonprofit Corporation Law. *New Hope Acad. Charter Sch. v. School Dist. of York*, 89 A.3d 731, 741 (Pa. Cmwlt. Ct. 2014).

58. Contracts or transactions between the management company, or the principals involved in the management company, and the charter school are subject to the Ethics Act requirements. *Id.*

59. When a client relies on the attorney’s advice as an affirmative defense, or when the confidential information is placed at issue, the client waives the attorney-client privilege. *Bonds v. Bonds*, 689 A.2d 275, 277 (Pa. Super. Ct. 1997).

60. Where intent is not an element of a cause of action, reliance upon counsel may not be raised as an affirmative defense. *See, e.g. Phelps v. Caperoon*, 190 A.3d 1230, 1238-1239 (Pa. Super. Ct. 2018).

61. “When a board of trustees does not operate a charter school properly, e.g., the board of trustees violates the charter, the Sunshine Act, or other laws, the remedy is to revoke the charter under section 1729-A of the Charter School Law. 24 P.S. § 17-1729-A.” *Fairfield Area School Dist. v. National Org. for Children, Inc.*, 837 A.3d 644, 651 (Pa. Cmwlth. Ct. 2003) (holding that the trial court did not err in concluding that school districts lacked standing to sue the individual members of the Board of Trustees for violations of the Sunshine Act and other laws, in light of section 1729-A’s remedy of nonrenewal or revocation).

62. The trustees of a charter school must maintain ultimate control of the school, not the school’s management company. *West Chester Area Sch. Dist. v. Collegium Charter Sch.*, 812 A.2d 1172, 1177 (Pa. 2002).

63. “A prerequisite to the grant of a charter is the organization of the school as a nonprofit corporation governed by a board of trustees that possesses authority to decide matters relating to the operation of the school, subject to the school’s charter.” *Mosaica Acad. Charter Sch. v. Department of Educ.*, 813 A.2d 813, 818 (Pa. 2002).

The Nonprofit Corporation Law

64. The Nonprofit Corporation Law (“NCL”), 15 Pa. C.S.A. §§ 5701 *et seq.*, states in pertinent part:

(a) Directors.--A director of a nonprofit corporation shall stand in a fiduciary relation to the corporation and shall perform his duties as a director, including his duties as a member of any committee of the board upon which he may serve, in good faith, in a manner he reasonably believes to be in the best interests of the corporation and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances. In

performing his duties, a director shall be entitled to rely in good faith on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by any of the following:

(1) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented.

(2) Counsel, public accountants or other persons as to matters which the director reasonably believes to be within the professional or expert competence of such person.

(3) A committee of the board upon which he does not serve, duly designated in accordance with law, as to matters within its designated authority, which committee the director reasonably believes to merit confidence.

(b) Effect of actual knowledge.—A director shall not be considered to be acting in good faith if he has knowledge concerning the matter in question that would cause his reliance to be unwarranted.

15 Pa. C.S.A. § 5712.

65. Directors can breach their duty of care to the nonprofit corporation by ignoring reports about serious mismanagement and failing to take appropriate action. *See, e.g. In re Lemington Home for Aged*, 777 F.3d 620, 629 (3d Cir. 2015) (duty of care was breached where the directors ignored reports about serious mismanagement by the nonprofit's senior administrator and failed to fire the individual).

66. Directors or trustees of a nonprofit corporation must consider the best interests of the nonprofit corporation when discharging their duties. In considering the best interests of the corporation, directors or trustees may consider the following: (a) the effects of any action on any or all groups affected by such action, including creditors; (b) the short-term and long-term interests of the corporation; and (c) all other pertinent factors. 15 Pa. C.S.A. § 5715(a).

67. Under the NCL, an interested director of a nonprofit corporation is a director who has a contract or has engaged in a transaction with the nonprofit corporation or is a director who

has a financial or other interest in a domestic or foreign corporation for profit or not-for-profit, partnership, joint venture, trust or other association with which the nonprofit corporation has a contract or has engaged in a transaction. *See* 15 Pa. C.S.A. § 5728.

68. Under the NCL, it is permissible for a board to authorize a contract or transaction by the affirmative votes of a majority of the disinterested directors even though the disinterested directors are less than a quorum. 15 Pa. C.S.A. § 5728(a)(1). A contract or transaction in which an interested director has voted is not void or voidable, so long as:

(1) the material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the board of directors and the board authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors even though the disinterested directors are less than a quorum;

(2) the material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the members entitled to vote thereon, if any, and the contract or transaction is specifically approved in good faith by vote of those members; or

(3) the contract or transaction is fair as to the corporation as of the time it is authorized, approved or ratified by the board of directors or the members.

15 Pa. C.S.A. § 5728(a).

The Sunshine Act

69. “The board of trustees [of a charter school] shall comply with the act of July 3, 1986 (P.L. 388, No. 84), known as the ‘Sunshine Act.’” 24 P.S. § 17-1716-A(c).

70. “The General Assembly finds that the right of the public to be present at all meetings of agencies and to witness the deliberation, policy formulation and decision making of agencies is vital to the enhancement and proper functioning of the democratic process and that secrecy in public affairs undermines the faith of the public in government and the public's effectiveness in fulfilling its role in a democratic society.” 65 Pa. C.S. § 702(a).

71. “Official action and deliberations by a quorum of the members of any agency shall take place at a meeting open to the public unless closed under section 707 (relating to exceptions to open meetings), 708 (relating to executive sessions) or 712 (relating to General Assembly meetings covered).” 65 Pa. C.S. § 704.

72. “In all meetings of agencies, the vote of each member who actually votes on any resolution, rule, order, regulation, ordinance or setting of official policy must be publicly cast and, in the case of roll call votes, recorded.” 65 Pa. C.S. § 705.

73. The Sunshine Act also provides as follows:

Written minutes shall be kept of all open meetings of agencies. The minutes shall include:

- (1) The date, time and place of the meeting.
- (2) The names of members present.
- (3) The substance of all official actions and a record by individual member of the roll call votes taken.
- (4) The names of all citizens who appeared officially and the subject of their testimony.

65 Pa. C.S. § 706.

74. An executive session “may be held during an open meeting or at the conclusion of an open meeting or may be announced for a future time. The reason for holding the executive session must be announced at the open meeting occurring immediately prior or subsequent to the executive session.” 65 Pa. C.S. § 708(b).

75. A charter school’s failure to comply with its Bylaws during the Charter term, as required by its Charter, is grounds for revocation. *Khepera*, at 48.

Assessment of Academic Performance

76. “A charter school shall participate in the Pennsylvania State Assessment System as provided for in 22 Pa. Code Ch. 5 (relating to curriculum), or subsequent regulations promulgated to replace 22 Pa. Code Ch. 5, in the manner in which the school district in which the charter school is located is scheduled to participate.” 24 P.S. § 17-1715-A(8).

77. Chapter 5 of Title 22 of the Pennsylvania Code was repealed and replaced by Chapter 4 on January 15, 1999 at 29 Pa. B. 399. *See New Hope (Cmwlth.)*, at 737; *Sugar Valley Rural Charter Sch.*, CAB No. 2004-04, at 9 (May 11, 2005).

78. The term “school entities” is defined by Chapter 4 to include a “charter school.” 22 Pa. Code § 4.3.

79. A decision to revoke or not renew a charter may be based on failure to comply with the academic requirements in Chapter 4. *See Graystone Charter Sch. v. Coatesville Area Sch. Dist.*, 99 A.3d 125, 139 (Pa. Cmwlth. Ct. 2014) (“*Graystone (Cmwlth.)*”); *Career Connections Charter High Sch. v. School Dist. of Pittsburgh*, 91 A.3d 736 (Pa. Cmwlth. Ct. 2014) (“*Career Connections*”); *New Hope (Cmwlth.)*, at 738.

80. “The purpose of Chapter 4 is ‘to establish rigorous academic standards and assessments to facilitate the improvement of student achievement and to provide parents and communities a measure by which school performance can be determined.’ 22 Pa. Code §§ 4.2; *see also* 24 P.S. §17-1702-A(6).” *Truebright (CAB)*, at 15.

81. “A school entity’s curriculum shall be designed to provide students with planned instruction needed to attain these academic standards [set forth in Chapter 4].” 22 Pa. Code § 4.12(d).

82. Chapter 4 describes the State assessment system as follows:

(a) The State assessment system shall be designed to serve the following

purposes:

- (1) Provide students, parents, educators and citizens with an understanding of student and school performance consistent with the No Child Left Behind Act of 2001 (Pub. L. No. 107-110, 115 Stat. 1425).
 - (2) Determine the degree to which school programs enable students *to attain proficiency of academic standards* under § 4.12 (relating to academic standards).
 - (3) Provide information to State policymakers, including the General Assembly and the Board on how effective schools are in promoting and demonstrating student proficiency of academic standards.
 - (4) Provide information to the general public on school performance.
 - (5) Provide results to school entities based upon the aggregate performance of all students, for students with an Individualized Education Program (IEP) and for those without an IEP.
 - (6) Assess student proficiency in the academic standards for English Language Arts . . . Mathematics . . . science and technology and environment and ecology . . . and civics and government . . . for the purpose of determining, in part, a student's eligibility for high school graduation.
- (b) The State assessment system shall include PSSA assessments and Keystone Exams.

22 Pa. Code § 4.51(a) (emphasis added).

83. The State assessment system classifies academic proficiency as follows:

a. "Advanced" means "superior academic performance indicating an in-depth understanding and exemplary display of the skills included in Pennsylvania's Academic Standards." 31 Pa. B. 2763.

b. "Proficient" means "satisfactory academic performance indicating a solid understanding and adequate display of the skills included in Pennsylvania's Academic Standards." 31 Pa. B. 2763.

c. “Basic” means “marginal academic performance, work approaching, but not yet reaching satisfactory performance, indicating partial understanding and limited display of the skills included in Pennsylvania’s Academic Standards.” 31 Pa. B. 2763.

d. “Below Basic” means “inadequate academic performance that indicates little understanding and minimal display of the skills included in Pennsylvania’s Academic Standards.” 31 Pa. B. 2763.

84. Under ESEA, state accountability systems are required to measure proficiency on annual assessments and, at the state’s discretion, student growth as measured by such annual assessments, including for subgroups of students, defined as economically disadvantaged students, students from major racial and ethnic groups, children with disabilities and English learners. 20 U.S.C. § 6311(c).

85. As of August 30, 2013, after receiving a waiver from the United States Department of Education, PDE instituted the SPP reporting system, which continued to use students’ attainment of Advanced or Proficient scores on the PSSA as measures of academic achievement. *See Community Acad.*, at 43; *Delaware Valley*, at 32-33.

86. The SPP weighs a variety factors when measuring a school’s academic performance, including “raw test scores on the PSSA and Keystone Exams, academic growth through PVAAS scores, graduation rates, attendance rates, College Board testing, college attendance after graduation, and student achievement in Advanced Placement (‘AP’) testing in Mathematics, Reading/Literature, Science/Biology, and Writing.” *Community Acad.*, at 43. “All of these data elements are evaluated in order to create a ‘building level academic score’ that is used to track achievement for state-level academic accountability.” *Id.*

87. Allowing a charter school to “remain open despite student academic performance that is consistently far below state standards would violate the overriding purpose of the Public School Code to provide ‘a thorough and efficient system of public education,’ and could raise issues of unconstitutionality under Article III, Section 14 of the Pennsylvania Constitution.” *New Hope (Cmwlth.)*, at 739-40 (citation omitted).

88. Absent unusual circumstances not present here, it is appropriate to compare a charter school’s academic performance to the average academic performance of schools in the local school district when applying 24 P.S. § 17-1729-(a)(2). *See Id.*; *see also Truebright (CAB)*, at 18; *Community Acad.*, at 45; *c.f. Gillingham Charter Sch. v. Pottsville Area Sch. Dist.*, CAB No. 2016-11, at 74-75 (Oct. 27, 2017) (rejecting such a comparison because two thirds of the charter school’s students were drawn from outside the chartering school district).

89. CAB has affirmed the comparison of a charter school’s scores to the average of the scores of both the public schools, including special admission schools, and the other charter schools operating within the School District. *Delaware Valley*, at 29; *Khepera*, at 42; *Imani*, at 11.

90. “Chapter 4 does set forth a measurement and requirement of student academic performance: the PSSA and proficiency as measured by the PSSA.” *New Hope (Cmwlth.)*, at 737. “Proficiency as measured by PSSA test scores is therefore a Chapter 4 student performance requirement.” *Id.*

91. “A consistently low percentage of students scoring proficient or better on the PSSA constitutes a failure to satisfy Chapter 4 student performance requirements and is a valid ground for nonrenewal of a school’s charter under Section 1729-A(a)(2) of the [CSL] where the charter schools’ proficiency rates are lower than those of its school district’s schools as a whole

and no clear pattern of significant improvement in its PSSA results is shown.” *New Hope (Cmwlth.)*, at 737²²; accord *Career Connections*, at 741; *Imani*, at 32; *Delaware Valley*, at 29; *Khepera*, at 42.

92. When comparing a charter school’s scores to the School District’s scores, all schools operated by the School District should be included, rather than excluding schools with the highest scores or the lowest scores. *New Hope (Cmwlth.)*, at 737.

93. CAB has also affirmed the comparison of a charter school’s scores to the average of the scores of all the charter schools operating within the School District. *Delaware Valley*, at 29.

94. Keystone Exam requirements established by the State Board of Education are set forth in Section 4.51b. 22 Pa. Code § 4.51b. After implementation of the Keystone Exams in the 2012-13 school year, those Exams became the proper measure of eleventh grade performance. *New Hope*, at 737, n. 8.

95. Section 4.24(k) addresses high school requirements relative to the Keystone Exams, and states as follows:

Beginning in the 2011-2012 school year, a student who does not demonstrate proficiency on a Keystone Exam . . . shall be offered supplemental instructional support by the student’s . . . charter school, including a cyber charter school. The supplemental instructional support must be consistent with the student’s educational program and assist the student to attain proficiency in the State academic standards.

22 Pa. Code § 4.24(k).

²² The 2014 decision of the Commonwealth Court in *New Hope (Cmwlth.)* did not address a charter school’s academic performance on the Keystone Exams or the SPP because the last data available was for the 2011-2012 school year, which pre-dated those newer measures. *New Hope (Cmwlth.)*, at 733.

96. A chartering school district is authorized to revoke or not renew the charter of a charter school if the standards for student achievement as set forth in Chapter 4 or its charter are not met. 24 P.S. § 17-1729-A(a)(2); *see e.g. New Hope; Career Connections; Graystone (Cmwlth.); Academy Charter Sch. v. Coatesville Area Sch. Dist.*, 99 A.3d 125, 139 (Pa. Cmwlth. Ct. 2014); *Truebright Science Acad. Charter Sch. v. Philadelphia Sch. Dist.*, 115 A.3d 919, 922-923 (Pa. Cmwlth. Ct. 2015) (“*Truebright (Cmwlth.)*”).

97. As noted by CAB:

The purpose of Chapter 4 is ‘to establish rigorous academic standards and assessments to facilitate the improvement of student achievement and to provide parents and communities a measure by which school performance can be determined. 22 Pa. Code § 4.2; *see also* 24 P.S. § 17-1702-A(6). Section 4.51 of Ch.4 regulations require schools to demonstrate that their students are proficient or better on the PSSA tests every year, pursuant to the mandates of the No Child Left Behind . . . Act. 22 Pa. Code § 4.51(a)(1). The General Assembly, consistent with its expression of intent, provided for a basis of nonrenewal of a charter in the event that a charter school failed to meet the requirements for student performance as set forth in Ch. 4 of the State Board of Education regulations. 24 P.S. § 17-1729-A(a)(2).

Delaware Valley, CAB No. 2016-06, at 27-28.

98. Whether a charter school has met the PVAAS growth standard is a valid consideration for renewal or revocation. *Truebright (CAB)*, at 18.

99. Olney failed to meet the requirements for student performance as set forth in 22 Pa. Code, Ch. 4. 24 P.S. § 17-1729-A(a)(2).

Charter Requirements

100. A charter school’s failure to meet a performance goal set forth in its charter is also a valid ground for nonrenewal or revocation under 24 P.S. § 17-1729-A(a)(2). *Reading Sch. Dist.; Truebright (Cmwlth.)*, at 922; *Graystone (Cmwlth.)*, at 139; *Khepera*, at 44;

101. After 2016-17, SPP scores continue to be relevant to charter school performance, because they are a component of the evaluation of a multiple charter school organization application. 24 P.S. § 17-1729.1-A(b)(1)(iii). This provision of the CSL was added in November 2017. 2017, Nov. 6, P.L. 1142, No. 55, § 10, eff. imd.

102. Olney failed to meet the goals and requirements for student performance as set forth in its charter and the Renaissance program. 24 P.S. § 17-1729-A(a)(2).

103. Olney also failed to comply with its charter in other material respects regarding attendance and habitual truancy.

104. Stetson also failed to comply with its charter requirements for SOFIs.

105. Stetson also failed to comply with its charter requirements for HQTs.

106. Stetson also failed to comply with its charter requirements for certifications of special education staff.

Fiscal Management

107. The mismanagement of a charter school's finances is an appropriate reason to refuse to renew or to revoke the charter of the school. *See e.g. Ronald H. Brown Charter School*, 928 A.2d 1145 (Pa. Cmwlth. Ct. 2007) (revocation/non-renewal upheld where charter school had general fund deficit for 3 years and failed to make interest payments on interest-only note to management company); *Thurgood Marshall* (fiscal mismanagement sufficient to support revocation where charter school overspent its budget by over \$140,000 and placed itself in budget deficit of over \$50,000); *Creative Educ. Concepts Charter Sch.*, CAB No. 1999-15 (revocation upheld where charter school operated at a loss).

Financial Reports and Audits

108. The CSL, 24 P.S. § 17-1719(9), requires a charter school to be audited in accordance with Section 437 of the School Code, which states as follows: “The accounts of the school treasurer shall be audited annually as hereinafter provided.” 24 P.S. § 4-437.

109. “An annual financial report shall be submitted to the Secretary of Education by each . . . charter school . . . not later than the 31st day of October.” 24 P.S. § 2-218(a).

110. “The chief school administrator and board secretary of a . . . charter school . . . shall submit a signed statement to the Department of Education not later than the 31st day of December of each year certifying that: the audited financial statements of the . . . charter school . . . have been properly audited pursuant to Article XXIV and that in the independent auditor’s professional opinion, the financial statements submitted in the annual financial report was materially consistent with the audited financial statements.” 24 P.S. § 2-218(b).

111. The annual independent audit of a charter school’s financial statements must be completed on or before December 31 of each year. 24 P.S. § 2-218(b); *Graystone (Cmwlth.)*, at 140-41; *Graystone (CAB)*, at 60.

112. Olney’s failure to meet these audit requirements for 2013, 2014, and 2016 are grounds for revocation of its charter. 24 P.S. § 17-1729-A(a)(3).

Teacher Qualifications

113. All public school teachers teaching core academic subjects supported by Title I funds were required to be highly qualified by the end of the 2005-06 school year. 20 U.S.C. § 6319(a)(2); 22 Pa. Code § 403.4.

114. To be highly qualified, a teacher must hold a bachelor’s degree and must demonstrate competence in the core content areas in which they teach through the means

permitted under the state law to do so, in addition to meeting the certification requirements under the CSL. *See Khepera*, at 25 ¶ 137.

115. A failure to have all core academic subjects taught by highly qualified teachers through the 2015-16 school year can be a basis for revocation or nonrenewal, even though that was no longer required in subsequent years. *Khepera*, at 47.

116. In addition, “[a]t least seventy-five per centum of the professional staff members of a charter school shall hold appropriate State certification.” 24 P.S. § 17-1724-A(a).

117. PDE has the “following responsibilities with respect to certification and permitting of professional personnel in the schools of this Commonwealth: . . . (2) Designation of professional titles for personnel. (3) Prescription of procedures for issuance of certificates and permits (5) Registration of certified and permitted persons. (6) Maintenance of records of all certificates and permits. . . . (10) The issuance of administrative agency interpretative policies and directives relating to professional certification and staffing in the schools of this Commonwealth as may be necessary to carry out the intent of this chapter.” 22 Pa. Code § 49.13(b).

118. “Persons who provide special education and related services to children with disabilities in charter schools and cyber charter schools shall have appropriate certification, notwithstanding section 1724-A of the [CSL].” 22 Pa. Code § 711.5.

119. The special education staff and coordinator must hold appropriate State certification and cannot be part of the 25% of professional staff not required to hold appropriate certification. *Ronald Brown Charter Sch.*, CAB No. 2005-08, at 26-27 (July 19, 2006).

Public School Employees' Retirement System

120. The CSL also provides that “The charter school . . . shall make quarterly payments by employers to the Public School Employees' Retirement System . . .” (“PSERS”) and that “employees of a charter school shall make regular member contributions as required for active members under 24 Pa. C.S. Pt. IV.” 24 P.S. § 17-1724-A(c).

121. To ensure receipt a charter school's employer and employee contributions to PSERS, any unpaid amounts due are deducted from funds appropriated to the chartering school district, and then deducted by the chartering school district from its payment to the charter school pursuant to the Public School Code of 1949. 24 Pa. C.S.A. § 8327(b)(2).

122. In addition, if a charter school fails to remit employer or employee contributions in a timely manner, “the Board will impose an interest charge of 6% per annum to the date of payment, to be added to the amount of the delinquency, whether payment shall occur through the subsidy deduction method or shall be made directly to the Board by the delinquent employer.” 22 Pa. Code § 213.27(b).

School Violence Statistics

123. All school entities are required to submit annual school violence statistics and reports to PDE's Office for Safe Schools by no later than July 31 of each year. 24 P.S. §§ 13-1302-A(b)(2.1), 13-1303-A(b).

Grounds for Revocation

124. The School District has met its burden of proving each of the following grounds for nonrenewal of Olney's charter by a preponderance of the evidence:

- a. Olney failed to meet material requirements in its charter. *See* 24 P.S. § 17-1729-A(a)(1).

b. Olney failed to meet applicable requirements for student performance. *See* 24 P.S. § 17-1729-A(a)(2).

c. Olney failed to meet generally accepted standards of fiscal management and audit requirements. *See* 24 P.S. § 17-1729-A(a)(3).

d. Olney violated multiple provisions of law from which it has not been exempted. *See* 24 P.S. § 17-1729-A(a)(5).

125. Many of these established violations provide compelling reasons for nonrenewal of Olney's charter, because they are significant, material and fundamental. *See Renaissance Charter*, at 3 n.3.

126. The established violations are based upon the evidence presented at the hearing, not the CSO's Renewal Recommendation Report.

127. Nonrenewal of Olney's charter is not likely to undermine the core purpose of the CSL to improve student learning, because in all years and subjects, the proficiency rates of students at School District schools and Philadelphia charter schools have significantly exceeded the proficiency rates of Olney's students.


128. The number and breadth of Olney's charter and legal violations reveal a pervasive lack of organizational competence, which further supports an exercise of the BOE's discretion to not renew Olney's charter.

129. Accordingly, the School District has established a sufficient factual and legal basis for not renewing Olney's charter.

130. Olney has not met its burden of proving by a preponderance of the evidence that the CSO's nonrenewal recommendation was arbitrary or capricious. Moreover, the CSO's recommendation was at most an internal opinion by agency staff. The final adjudication will be

by vote of the BOE, and it will be based on the evidence presented at the hearing, not on the CSO's renewal report.

131. Olney also has not met its burden of proving by a preponderance of the evidence that the School District has treated minority-led charter schools differently than other charter schools, or that it did so with a discriminatory purpose. *See PG Publishing Co. v. Aichele*, 705 F.3d 91, 115 (3rd Cir. 2013).



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Date: September 19, 2019

**BOARD OF EDUCATION
THE SCHOOL DISTRICT OF PHILADELPHIA**

In the Matter of:

Charter Nonrenewal Proceeding Regarding
Olney Charter High School

PROPOSED ADJUDICATION OF THE BOARD OF EDUCATION

The Hearing Officer proposes the following adjudication for adoption as a resolution of the Board of Education.

RESOLUTION

Re: Olney Charter High School; Nonrenewal of Charter

WHEREAS, pursuant to the Charter School Law (“CSL”), 24 P.S. § 17-1701-A et seq., the School Reform Commission (“SRC”) of The School District of Philadelphia (“School District”) granted a charter (“Charter”) to the Board of Trustees of OLNEY CHARTER HIGH SCHOOL (“Olney”) to operate a charter school for a five-year term commencing in 2011; and

WHEREAS, Olney seeks renewal of its Charter; and

WHEREAS, members of the Charter Schools Office (“CSO”) of the School District reviewed the academic performance, organizational compliance and viability, and fiscal health and sustainability of Olney during the term of the Charter and concluded that there were grounds for the commencement of nonrenewal proceedings against the Olney under Section 1729-A of the CSL; and

WHEREAS, in compliance with Section 1729-A of the CSL, the SRC, by Resolution No. SRC-8, approved on December 14, 2017, resolved that there were substantial grounds for nonrenewal of Olney’s Charter, set forth the reasons supporting such nonrenewal, scheduled a hearing in this matter and authorized the appointment of a hearing officer to conduct the hearing; and

WHEREAS, the Board of Education (“Board”) replaced the SRC and became its successor with respect to this proceeding on July 1, 2018; and

WHEREAS, the Board appointed a Hearing Officer on December 5, 2018 who held a public hearing on March 12, 13, 15, 18, 19, 20, 25, 26, 27, 29, and April 2, 8, 9, 10, 12 and 15, 2019, during which testimony and exhibits were received regarding whether Olney’s charter should or should not be renewed; and

WHEREAS, a 30-day public comment period was provided following the conclusion of the hearing; and

WHEREAS, pursuant to the CSL, Olney has been permitted to remain in operation pending the outcome of these proceedings; and

WHEREAS, on September 19, 2019, the Hearing Officer certified the record of the hearing and submitted a report to the Board recommending nonrenewal of Olney's Charter, including findings of fact, conclusions of law and a proposed adjudication; and


WHEREAS, the Board has reviewed all of the testimony and exhibits submitted during the hearing, the Hearing Officer's Report, including its Findings of Fact and Conclusions of Law, the submissions by all interested parties, and the public comments received; and

WHEREAS, this matter is now ripe for decision; now be it

RESOLVED, that Olney's request for renewal of its Charter is DENIED.

FURTHER RESOLVED, that the Board adopts the Hearing Officer's Report, including its Findings of Fact and Conclusions of Law, as the reasons for this decision.

FURTHER RESOLVED, that in the event Olney timely appeals this decision to the State Charter School Appeal Board ("CAB"), pursuant to the requirement contained in Section 1729-A(f) of the CSL, the Charter shall remain in effect and Olney shall be permitted to remain open pending the conclusion of its appeal before CAB. In the event that Olney does not appeal this decision to the CAB, Olney shall cease all operations pursuant to a dissolution plan and timetable established by the School District, under the direction of the Office of General Counsel. Said plan shall be presented to the Board within sixty (60) days of the date of this Order.



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Date: September 19, 2019

**BOARD OF EDUCATION
THE SCHOOL DISTRICT OF PHILADELPHIA**

In the Matters of:

Charter Nonrenewal Proceeding Regarding
Olney Charter High School

Charter Nonrenewal Proceeding Regarding
John B. Stetson Charter School

CERTIFICATION OF THE RECORD

I hereby certify that the following transcripts, exhibits, and public comments submitted herewith constitute a true and complete record of the hearings in these nonrenewal proceedings by the School District of Philadelphia (“School District” or “SDP”) against Olney Charter High School (“Olney”) and John B. Stetson Charter School (Stetson):

A. Transcripts¹

<u>Vol.</u>	<u>Date</u>	<u>Witnesses</u>	<u>Pages</u>	<u>Matter</u>
01	03/12/19	Peng Chao	023-090	Olney
		Roger S. Kligerman	094-268	Olney
02	03/13/19	Roger S. Kligerman	004-109	Olney
		Nicholas Spiva	114-269	Olney
		Timothy Hanser	272-289	Olney
03	03/15/19	Timothy Hanser	004-087	Olney
		Mayer Krain	088-254	Olney
04	03/18/19	Lillian English-Hentz	018-065	Olney
		Sheila Rodriguez	068-76	Olney
		Carmen Camacho	079-87	Olney

¹ Because there was substantial overlap between the witnesses called in the Olney and Stetson matters, and because some of the witnesses were called out of order to accommodate their schedules, the parties agreed to include all of the testimony for both hearings in a single set of transcripts. (*See* Tr. vol. 13, at 4:3-5:1.) All of the transcripts are listed here, but only portions relevant to the particular matter are cited in the Hearing Officer’s Report, Findings of Fact and Conclusions of Law (“Report”) for that matter.

<u>Vol.</u>	<u>Date</u>	<u>Witnesses</u>	<u>Pages</u>	<u>Matter</u>
		James Thompson	087-233	Olney
		Ellen Green	233-316	Olney
05	03/19/19	Peng Chao	004-226	Stetson
		Peng Chao	227-267	Olney
		Thomas Darden	267-297	Olney
06	03/20/19	Ellen Green	004-221	Olney
		Daniel LaSalle	222-254	Olney
		Thomas Darden	254-291	Olney
07	03/25/19	Thomas Darden	004-232	Olney
		Yeslli Ann Hernandez	242-256	Olney
		Timothy Hanser	256-294	Olney
08	03/26/19	Nicholas Spiva	004-028	Olney
		Xin Yi	028-169	Olney
		Roger Kligerman	175-227	Olney
		Gary Samms	236-330	Both
09	03/27/19	Alexander Schuh	008-258	Olney
10	03/29/19	Thomas Darden	015-054	Both
		Nicholas Spiva	057-160	Stetson
		Gary Samms	169-247	Both
11	04/02/19	Gary Samms	004-132	Both
12	04/08/19	Roger Kligerman	004-205	Stetson
		Thomas E. Mullin	211-327	Stetson
		Joanne Esquilin	327-371	Stetson
13	04/09/19	Hedyanne Vallines	013-024	Stetson
		Yubelkis Soto	026-033	Stetson
		Debra Williams	034-046	Stetson
		Joely Sanchez	054-067	Stetson
		Maria Sanchez Ortiz	067-081	Stetson
		Alexander Schuh	082-248	Both
14	04/10/19	Alexander Schuh	004-097	Both
		Glenda Marrero	098-292	Stetson
15	04/12/19	Timothy Hanser	004-124	Both
		Mayer Krain	126-157	Both
		Alexander Schuh	157-252	Both

<u>Vol.</u>	<u>Date</u>	<u>Witnesses</u>	<u>Pages</u>	<u>Matter</u>
16	04/15/19	Mayer Krain	004-101	Both
		Jeanette Rodriguez	101-131	Stetson
		Xin Yi	132-271	Stetson
		Natalie Hoffa	272-279	Both
		Peng Chao	301-342	Both

B. Joint Exhibits in the Olney Matter²

<u>Exhibit</u>	<u>Description</u>	<u>Status³</u>
JE[O] 1	Resolution SRC-8, adopted December 14, 2017, Notice of Nonrenewal of Charter	Admitted
JE[O] 2	2011 Charter Agreement for Olney Charter High School (“Olney”)	Admitted
JE[O] 3	Minutes of meetings by Olney’s Board of Trustees from 2011-2015	Admitted
JE[O] 4	Olney’s independent financial audit for the year ending June 30, 2012	Admitted
JE[O] 5	Olney’s independent financial audit for the year ending June 30, 2013	Admitted
JE[O] 6	Olney’s independent financial audit for the year ending June 30, 2014	Admitted

² The parties agreed that relevant portions of the Olney and Stetson records could be incorporated into and relied upon in either proceeding. (Tr. vol. 4, at 305:6-308:8; Tr. vol. 5, at 32:23-33:23; Tr. vol. 10, at 4:17-23.) Accordingly, the exhibits for both hearings are included as part of the record here. The exhibits were pre-numbered separately before this agreement was reached, so to avoid confusion, it is necessary to distinguish the exhibits in one case from different exhibits with the same numbers in the other case. Accordingly, with respect to the exhibits submitted in the Olney matter, joint exhibits are cited here as Ex. JE[O] 1-108, School District exhibits are cited as Ex. SD[O] 1-33 and Olney exhibits are cited as Ex. Olney 1-300. Similarly, with respect to exhibits submitted in the Stetson matter, joint exhibits are cited as Ex. JE[S] 1-92, School District exhibits are cited as Ex. SD[S] 1-28 and Stetson exhibits are cited as Ex. Stetson 1-277. Additional Hearing Officer exhibits and public comments are also included to complete the record. Those for Olney are cited as Ex. HO[O] 1-125 and Ex. PC[O] 1-143, and those for Stetson are cited as Ex. HO[S] 1-131 and Ex. PC[S] 1-58.

³ In the Status columns, “Admitted” means that the entire exhibit was admitted into evidence, “Excluded” means its admission was denied, “Partial” means it was admitted in part, “Qualified” means it was admitted with specified qualifications, and “N.O.” means it was not offered into evidence.

<u>Exhibit</u>	<u>Description</u>	<u>Status</u> ³
JE[O] 7	Olney's independent financial audit for the year ending June 30, 2015	Admitted
JE[O] 8	Olney's independent financial audit for the year ending June 30, 2016	Admitted
JE[O] 9	Olney's independent financial audit for the year ending June 30, 2017	Admitted
JE[O] 10	Olney's independent financial audit for the year ending June 30, 2018	Admitted
JE[O] 11	2013-2014 Required Federal Reporting Measures ("RFRM") report for Olney	Admitted
JE[O] 12	2014-2015 RFRM report for Olney	Admitted
JE[O] 13	2014-2015 RFRM report for Olney	Admitted
JE[O] 14	2016-2017 RFRM report for Olney	Admitted
JE[O] 15	2016-2017 School Performance Profile ("SPP") for Olney with Fast Facts and historical academic data	Admitted
JE[O] 16	Screenshot from Pennsylvania Department of Education's ("PDE") webpage showing Olney's 2017-2018 SPP building level score	Admitted
JE[O] 17	2015-2016 Renewal Recommendation Report for Olney	Admitted
JE[O] 18	2015 Pennsylvania Value Added Assessment System ("PVAAS") data for Olney – Algebra I, Literature and Biology	Admitted
JE[O] 19	2016 PVAAS data for Olney – Algebra I, Literature and Biology	Admitted
JE[O] 20	2017 PVAAS data for Olney – Algebra I, Literature and Biology	Admitted
JE[O] 21	2018 PVAAS data for Olney – Algebra I, Literature and Biology	Admitted
JE[O] 22	Glossary of Terms for SPP published by PDE	Admitted
JE[O] 23	2018 Future Ready PA Index Summary Report for Olney published by PDE	Admitted
JE[O] 24	Future Ready PA Index Glossary published by PDE	Admitted
JE[O] 25	List of 2017 Comprehensive Support and Improvement ("CSI") schools published by PDE	Admitted
JE[O] 26	2013-2014 School Progress Report ("SPR") for Olney issued by the School District	Admitted
JE[O] 27	2014-2015 SPR for Olney issued by the School District	Admitted

<u>Exhibit</u>	<u>Description</u>	<u>Status</u> ³
JE[O] 28	2015-2016 SPR for Olney issued by the School District	Admitted
JE[O] 29	2016-2017 SPR for Olney issued by the School District	Admitted
JE[O] 30	2016 Annual Charter Evaluation (“ACE”) for Olney issued by the School District	Admitted
JE[O] 31	2017 ACE for Olney issued by the School District	Admitted
JE[O] 32	2013-2014 list of Priority and Focus schools published by PDE	Admitted
JE[O] 33	2015-2016 list of Priority and Focus schools eligible for School Improvement Grants, as published by PDE at https://www.education.pa.gov/Teachers%20-%20Administrators/Federal%20Programs/Pages/School-Improvement-Grants-(SIG).aspx	Admitted
JE[O] 34	2015-2016 Renewal Application Narrative submitted to the School District by Olney	Admitted
JE[O] 35	Basic Education Circular (“BEC”) entitled “Educating Students with Limited English Proficiency and English Language Learners”	Admitted
JE[O] 36	BEC entitled “Enrollment of Students”	Admitted
JE[O] 37	2012-2013 SPP score and Academic Performance Data for Olney	Admitted
JE[O] 38	2013-2014 SPP score and Academic Performance Data for Olney	Admitted
JE[O] 39	2014-2015 Keystone results for Olney	Admitted
JE[O] 40	2015-2016 Keystone results for Olney	Admitted
JE[O] 41	2016-2017 Keystone results for Olney	Admitted
JE[O] 42	2017-2018 Keystone results for Olney	Admitted
JE[O] 43	March 15, 2016 letter from the CSO to Olney re: draft renewal recommendation report	Admitted
JE[O] 44	Master Level Service Agreement between Olney and ASPIRA, Inc. dated July 1, 2011	Admitted
JE[O] 45	Master Level Service Agreement between Olney and ASPIRA, Inc. dated July 1, 2012	Admitted
JE[O] 46	Master Level Service Agreement between Olney and ASPIRA, Inc. dated July 1, 2014	Admitted
JE[O] 47	2015-2016 Olney Enrollment Packet	Admitted
JE[O] 48	2015-2016 Olney Student Application	Admitted

<u>Exhibit</u>	<u>Description</u>	<u>Status</u> ³
JE[O] 49	2017 Notice of Deficiency issued by CSO	Admitted
JE[O] 50	2016 Notice of Deficiency issued by CSO	Admitted
JE[O] 51	Olney's Bylaws submitted July, 2015	Admitted
JE[O] 52	Olney's Bylaws submitted August, 2016	Admitted
JE[O] 53	Olney's Bylaws submitted September, 2017	Admitted
JE[O] 54	Olney's Bylaws submitted August 2018	Admitted
JE[O] 55	Statements of Financial Interest submitted by Olney	Admitted
JE[O] 56	Olney's 2014-2015 Annual Report	Admitted
JE[O] 57	Olney's 2015-2016 Annual Report	Admitted
JE[O] 58	Olney's 2016-2017 Annual Report	Admitted
JE[O] 59	Olney Summary Report for payments made by the School District in the 2012-2013 school year	Admitted
JE[O] 60	Olney Summary Report for payments made by the School District in the 2014-2015 school year	Admitted
JE[O] 61	Internal Accounting Controls and Accounting Procedures Manual for ASPIRA, Inc. and the ASPIRA-managed schools - 2017	Admitted
JE[O] 62	January 3, 2017 Notice of Deficiency – Timely Audit Submission issued by CSO to Olney	Admitted
JE[O] 63	2015 letter from PNC Bank issued to ASPIRA, Inc.	Admitted
JE[O] 64	2016 ACE Preview Window Conversation with ASPIRA – March 20, 2017	Admitted
JE[O] 65	2015-2016 Board of Trustees meeting minutes	Admitted
JE[O] 66	2016-2017 Board of Trustees meeting minutes	Admitted
JE[O] 67	2017-2018 Board of Trustees meeting minutes	Admitted
JE[O] 68	2015-2016 Student Handbook	Admitted
JE[O] 69	2015-2016 Code of Student Conduct	Admitted
JE[O] 70	ASPIRA, Inc. Consolidated Financial Statements for year ending June 30, 2011	Admitted
JE[O] 71	ASPIRA, Inc. Consolidated Financial Statements for year ending June 30, 2012	Admitted
JE[O] 72	ASPIRA, Inc. Consolidated Financial Statements for year ending June 30, 2013	Admitted
JE[O] 73	ASPIRA, Inc. Consolidated Financial Statements for year ending June 30, 2014	Admitted
JE[O] 74	Olney's Safe Schools Report, 2011-2012	Admitted
JE[O] 75	Olney's Safe Schools Report, 2012-2013	Admitted

<u>Exhibit</u>	<u>Description</u>	<u>Status</u> ³
JE[O] 76	Olney's Safe Schools Report, 2013-2014	Admitted
JE[O] 77	Olney's Safe Schools Report, 2014-2015	Admitted
JE[O] 78	Olney's Safe Schools Report, 2015-2016	Admitted
JE[O] 79	Olney's Safe Schools Report, 2016-2017	Admitted
JE[O] 80	Olney's Safe Schools Report, 2017-2018	Admitted
JE[O] 81	Security Agreement	Admitted
JE[O] 82	Credit Agreement	Admitted
JE[O] 83	Guarantee Agreement	Admitted
JE[O] 84	Mortgages, Security Agreements and Fixture Filings	Admitted
JE[O] 85	Written Consents in Lieu of Organization Meeting	Admitted
JE[O] 86	Secretary's Certificates	Admitted
JE[O] 87	Intercreditor Agreement	Admitted
JE[O] 88	Absolute Assignment of Leases, Rents, Income and Profits	Admitted
JE[O] 89	Audited financial statements for ASPIRA, Inc. – 2014-2015	Admitted
JE[O] 90	Audited financial statements for ASPIRA, Inc. – 2015-2016	Admitted
JE[O] 91	Audited financial statements for Antonia Pantoja Charter School – 2015-2016	Admitted
JE[O] 92	Audited financial statements for Antonia Pantoja Charter School – 2016-2017	Admitted
JE[O] 93	Audited financial statements for Antonia Pantoja Charter School – 2017-2018	Admitted
JE[O] 94	Audited financial statements for Eugenio Maria de Hostos Charter School – 2015-2016	Admitted
JE[O] 95	Audited financial statements for Eugenio Maria de Hostos Charter School – 2016-2017	Admitted
JE[O] 96	Audited financial statements for Eugenio Maria de Hostos Charter School – 2017-2018	Admitted
JE[O] 97	Open-End Mortgage and Security Agreement	Admitted
JE[O] 98	Subordination and Attornment Agreement	Admitted
JE[O] 99	Indenture	Admitted
JE[O] 100	2017 Notice of Deficiency	Admitted
JE[O] 101	2015-09-10 Emails re: letter from PNC	Admitted
JE[O] 102	Enrollment/Attendance review dated June 12, 2012	Admitted

<u>Exhibit</u>	<u>Description</u>	<u>Status</u> ³
JE[O] 103	2011 Lease Agreement between Olney and ACE/Dougherty	Admitted
JE[O] 104	2015 Internal Controls Policy	Admitted
JE[O] 105	2016 School Performance Profile Scores Statewide	Admitted
JE[O] 106	2017 School Performance Profile Scores Statewide	Admitted
JE[O] 107	Federal Accountability Designation for all Philadelphia District Schools, as published at http://www.eseafedreport.com/District/SchoolList/c51/126515001	Admitted
JE[O] 108	Stipulations	Admitted

C. Joint Exhibits in the Stetson Matter

<u>Exhibit</u>	<u>Description</u>	<u>Status</u>
JE[S] 1	Resolution SRC-9, adopted December 14, 2017, Notice of Nonrenewal of Charter	Admitted
JE[S] 2	2010 Charter Agreement for Stetson	Admitted
JE[S] 3	Stetson's independent financial audit for the year ending June 30, 2012	Admitted
JE[S] 4	Stetson's independent financial audit for the year ending June 30, 2013	Admitted
JE[S] 5	Stetson's independent financial audit for the year ending June 30, 2014	Admitted
JE[S] 6	Stetson's independent financial audit for the year ending June 30, 2015	Admitted
JE[S] 7	Stetson's independent financial audit for the year ending June 30, 2016	Admitted
JE[S] 8	Stetson's independent financial audit for the year ending June 30, 2017	Admitted
JE[S] 9	Stetson's independent financial audit for the year ending June 30, 2018	Admitted
JE[S] 10	2013-2014 Required Federal Reporting Measures ("RFRM") report for Stetson	Admitted
JE[S] 11	2014-2015 RFRM report for Stetson	Admitted
JE[S] 12	2015-2016 RFRM report for Stetson	Admitted
JE[S] 13	2016-2017 RFRM report for Stetson	Admitted
JE[S] 14	2016-2017 School Performance Profile ("SPP") for Stetson with Fast Facts and historical academic data	Admitted

<u>Exhibit</u>	<u>Description</u>	<u>Status</u>
JE[S] 15	Screenshot from Pennsylvania Department of Education's ("PDE") webpage showing Stetson's 2017-2018 SPP building level score	Admitted
JE[S] 16	2015-2016 Renewal Recommendation Report for Stetson	Admitted
JE[S] 17	Glossary of Terms for SPP published by PDE	Admitted
JE[S] 18	2018 Future Ready PA Index Summary Report for Stetson published by PDE	Admitted
JE[S] 19	Future Ready PA Index Glossary published by PDE	Admitted
JE[S] 20	2013-2014 School Progress Report ("SPR") for Stetson issued by the School District	Admitted
JE[S] 21	2014-2015 SPR for Stetson issued by the School District	Admitted
JE[S] 22	2015-2016 SPR for Stetson issued by the School District	Admitted
JE[S] 23	2016-2017 SPR for Stetson issued by the School District	Admitted
JE[S] 24	2016 Annual Charter Evaluation ("ACE") for Stetson issued by the School District	Admitted
JE[S] 25	2017 ACE for Stetson issued by the School District	Admitted
JE[S] 26	2013-2014 list of Priority and Focus schools published by PDE	Admitted
JE[S] 27	2015-2016 list of Priority and Focus schools eligible for School Improvement Grants, as published by PDE at https://www.education.pa.gov/Teachers - Administrators/Federal Programs/Pages/School-Improvement-Grants-(SIG).aspx	Admitted
JE[S] 28	2015-2016 Renewal Application Narrative submitted to the School District by Stetson	Admitted
JE[S] 29	BEC entitled "Enrollment of Students"	Admitted
JE[S] 30	2012-2013 SPP score and Academic Performance Data for Stetson	Admitted
JE[S] 31	2013-2014 SPP score and Academic Performance Data for Stetson	Admitted
JE[S] 32	March 15, 2016 letter from the CSO to Stetson re: draft renewal recommendation report	Admitted
JE[S] 33	2015-2016 Stetson Enrollment Packet	Admitted
JE[S] 34	September 2016 Screenshot from Stetson's website	Admitted

<u>Exhibit</u>	<u>Description</u>	<u>Status</u>
JE[S] 35	July 5, 2017 Notice of Deficiency issued by CSO to Stetson	Admitted
JE[S] 36	2016 ACE Preview Window Conversation with ASPIRA – March 20, 2017	Admitted
JE[S] 37	Stetson’s Bylaws	Admitted
JE[S] 38	Minutes of meetings by Stetson’s Board of Trustees from 2011-2012	Admitted
JE[S] 39	Minutes of meetings by Stetson’s Board of Trustees from 2012-2013	Admitted
JE[S] 40	Minutes of meetings by Stetson’s Board of Trustees from 2013-2014	Admitted
JE[S] 41	Minutes of meetings by Stetson’s Board of Trustees from 2014-2015	Admitted
JE[S] 42	Minutes of meetings by Stetson’s Board of Trustees from 2015-2016	Admitted
JE[S] 43	Minutes of meetings by Stetson’s Board of Trustees from 2016-2017	Admitted
JE[S] 44	Minutes of meetings by Stetson’s Board of Trustees from 2017-2018	Admitted
JE[S] 45	Statements of Financial Interest submitted by Stetson	Admitted
JE[S] 46	Stetson’s 2014-2015 Annual Report	Admitted
JE[S] 47	Stetson’s 2016-2017 Annual Report	Admitted
JE[S] 48	Stetson Summary Report for payments made by the School District in the 2012-2013 school year	Admitted
JE[S] 49	Stetson Summary Report for payments made by the School District in the 2014-2015 school year	Admitted
JE[S] 50	Internal Accounting Controls and Accounting Procedures Manual for ASPIRA, Inc. and the ASPIRA-managed schools	Admitted
JE[S] 51	January 3, 2017 Notice of Deficiency – Timely Audit Submission issued by CSO to Stetson	Admitted
JE[S] 52	2015 letter from PNC Bank issued to ASPIRA, Inc.	Admitted
JE[S] 53	ASPIRA, Inc. Consolidated Financial Statements for year ending June 30, 2011	Admitted
JE[S] 54	ASPIRA, Inc. Consolidated Financial Statements for year ending June 30, 2012	Admitted
JE[S] 55	ASPIRA, Inc. Consolidated Financial Statements for year ending June 30, 2013	Admitted

<u>Exhibit</u>	<u>Description</u>	<u>Status</u>
JE[S] 56	ASPIRA, Inc. Consolidated Financial Statements for year ending June 30, 2014	Admitted
JE[S] 57	Security Agreement	Admitted
JE[S] 58	Credit Agreement	Admitted
JE[S] 59	Guarantee Agreement	Admitted
JE[S] 60	Mortgages, Security Agreements and Fixture Filings	Admitted
JE[S] 61	Written Consents in Lieu of Organization Meeting	Admitted
JE[S] 62	Secretary's Certificates	Admitted
JE[S] 63	Intercreditor Agreement	Admitted
JE[S] 64	Absolute Assignment of Leases, Rents, Income and Profits	Admitted
JE[S] 65	2014-2015 PSSA results for Stetson	Admitted
JE[S] 66	2015-2016 PSSA results for Stetson	Admitted
JE[S] 67	2016-2017 PSSA results for Stetson	Admitted
JE[S] 68	2017-2018 PSSA results for Stetson	Admitted
JE[S] 69	2011-2014 PSSA Data File for Stetson	Admitted
JE[S] 70	2012-2013 AGI data for Stetson	Admitted
JE[S] 71	2012 Master Service Level Agreement	Admitted
JE[S] 72	Audited financial statements for ASPIRA, Inc. – 2014-2015	Admitted
JE[S] 73	Audited financial statements for ASPIRA, Inc. – 2015-2016	Admitted
JE[S] 74	Audited financial statements for Antonia Pantoja Charter School – 2015-2016	Admitted
JE[S] 75	Audited financial statements for Antonia Pantoja Charter School – 2016-2017	Admitted
JE[S] 76	Audited financial statements for Antonia Pantoja Charter School – 2017-2018	Admitted
JE[S] 77	Audited financial statements for Eugenio Maria de Hostos Charter School – 2015-2016	Admitted
JE[S] 78	Audited financial statements for Eugenio Maria de Hostos Charter School – 2016-2017	Admitted
JE[S] 79	Audited financial statements for Eugenio Maria de Hostos Charter School – 2017-2018	Admitted
JE[S] 80	Open-End Mortgage and Security Agreement	Admitted
JE[S] 81	Subordination and Attornment Agreement	Admitted
JE[S] 82	Indenture	Admitted

<u>Exhibit</u>	<u>Description</u>	<u>Status</u>
JE[S] 83	2015-02 emails re: missing items	Admitted
JE[S] 84	2015 PSSA Statewide School Data	Admitted
JE[S] 85	2016 PSSA Statewide School Data	Admitted
JE[S] 86	2017 PSSA Statewide School Data	Admitted
JE[S] 87	2018 PSSA Statewide School Data	Admitted
JE[S] 88	2016 School Performance Profile Scores Statewide	Admitted
JE[S] 89	2017 School Performance Profile Scores Statewide	Admitted
JE[S] 90	2018 AGI Math – Stetson	Admitted
JE[S] 91	2018 AGI English - Stetson	Admitted
JE[S] 92	Federal Accountability Designation for all Philadelphia District Schools, as published at http://www.easefedreport.com/District/SchoolList/c51/126515001	Admitted

D. School District Exhibits in the Olney Matter

<u>Exhibit</u>	<u>Description</u>	<u>Status</u>
SD[O] 1	2012-10-25 PSERS deduction	N.O.
SD[O] 2	2015-06-01 PSERS deduction	N.O.
SD[O] 3	ESL Student Level Access data for 2016-2017 from PDE for Olney Charter High School (“Olney”)	Admitted
SD[O] 4	ESL ACCESS 2016-2017 response from Olney	Admitted
SD[O] 5	ESL response with incomplete ACCESS tests 2016-2017	N.O.
SD[O] 6	ESL ACCESS information for 2015-2016	Admitted
SD[O] 7	Olney Summary Report for payments made by the School District in the 2013-2014 school year	N.O.
SD[O] 8	Olney Summary: Academic and Other Information	Admitted
SD[O] 9	Olney Fiscal Summary	Admitted
SD[O] 10	2017-2018 School Progress Report for Olney	Admitted
SD[O] 11	Olney Summary: Academic and Other Information – UPDATED	Admitted
SD[O] 12	2015 Service Level Agreement	Admitted
SD[O] 13	2017-2018 SPR School Metric Scores	Admitted
SD[O] 14	Olney 2017-2018 Annual Report	Admitted
SD[O] 15	Olney ACCESS 2017-18 Response	Admitted

<u>Exhibit</u>	<u>Description</u>	<u>Status</u>
SD[O] 16	Basic Education Circular, Educating English Learners	Admitted
SD[O] 17	2017-2018 SPR User Guide	Admitted
SD[O] 18	Statements of Financial Interest-Olney	Admitted ⁴
SD[O] 19	2019-03-14 Olney Summary - revised with updated Table 12 values	Admitted
SD[O] 20	Senate Bill 904 Testimony	N.O.
SD[O] 21	Article- District Charter Office Chief Resigns	N.O.
SD[O] 22	Promissory Demand Note	Admitted ⁵
SD[O] 23	August 24, 2011 License Agreement	Admitted
SD[O] 24	Letters to Calderon regarding Concerns with Documents Provided	Admitted
SD[O] 25	December 15, 2014 Letter Gutman regarding Concerns of the Charter School Office	Admitted
SD[O] 26	2018 ACE Olney	Admitted
SD[O] 27	2018-2019 Minutes	N.O.
SD[O] 28	Statement of Financial Interests	N.O.
SD[O] 29	Management Service Level Agreement	Admitted
SD[O] 30	Aspira Staffing Agreement	Admitted
SD[O] 31	Olney Charter High School FY 18-19 Final General Fund Budget	Admitted
SD[O] 32	Meeting Minutes- June 29, 2018 through January 2019	Admitted
SD[O] 33	Auditor General Report	Admitted

⁴ Exhibit SD[O] 18 was initially admitted subject to consideration of argument in post-hearing submissions regarding whether nonrenewal of a charter may be based upon deficiencies regarding statements of financial interest. (*See* Tr. vol. 2, at 270:3-271:5.) After considering the submissions, this exhibit is admitted without qualification, for the reasons explained in Section II.A.3 of the accompanying Report.

⁵ Exhibits SD[O] 22 and 26 were initially admitted subject to further argument in post-hearing submissions regarding whether after-acquired information must be excluded as beyond the scope of the resolution by which this hearing was commenced (Ex. JE[O] 1). (*See*; Tr. vol. 7, at 237:18-240:3.) After considering those submissions, the previous ruling is reaffirmed, for the reasons explained in Section III.H.3 of the accompanying Report.

E. School District Exhibits in the Stetson Matter

<u>Exhibit</u>	<u>Description</u>	<u>Status</u>
SD[S] 1	2012-02-23 PSERS deduction	N.O.
SD[S] 2	2012-06-01 PSERS deduction	N.O.
SD[S] 3	2013-04-25 PSERS deduction	N.O.
SD[S] 4	2015-06-01 PSERS deduction	N.O.
SD[S] 5	Summary for John B. Stetson Charter School (“Stetson”): Academic and Other Information	Admitted
SD[S] 6	Stetson Fiscal Summary	Admitted
SD[S] 7	2017-2018 School Progress Report for Stetson	Admitted ⁶
SD[S] 8	Stetson Summary: Academic and Other Information – UPDATED	Admitted
SD[S] 9	2015 Service Level Agreement	Admitted
SD[S] 10	2017-2018 SPR School Metric Scores	Admitted
SD[S] 11	Stetson 2017-2018 Annual Report	Admitted
SD[S] 12	2017-2018 SPR User Guide	Admitted
SD[S] 13	Senate Bill 904 Testimony	N.O.
SD[S] 14	Article- District Charter Office Chief Resigns	N.O.
SD[S] 15	Promissory Demand Note	Admitted
SD[S] 16	August 24, 2011 License Agreement	N.O.
SD[S] 17	Letters to Calderon regarding Concerns with Documents Provided	Admitted
SD[S] 18	December 15, 2014 Letter Gutman regarding Concerns of the Charter School Office	Admitted
SD[S] 19	2018 ACE Stetson	Admitted ⁷
SD[S] 20	2018-2019 Minutes	N.O.
SD[S] 21	Statement of Financial Interests	Admitted ⁸

⁶ Stetson objected to Exhibits SD[S] 7, 10 and 12 as beyond the scope of the resolution pursuant to which the Stetson hearing was commenced (Ex. JE[S] 1), but this objection is overruled for the reasons explained in Section III.H.3 of the accompanying Report. (*See* Tr. vol. 2, at 129:5-130:16; Tr. vol. 7, at 239:4-242:3; Tr. vol. 12, at 157:24-158:23, 208:3-16.)

⁷ Stetson objected to Exhibit SD[S] 19 as beyond the scope of the resolution pursuant to which the Stetson hearing was commenced (Ex. JE[S] 1), but this objection is overruled for the reasons explained in Section III.H.3 of the accompanying Report. (*See* Tr. vol. 10, at 165:7-13.)

⁸ Exhibit SD[S] 21 was admitted subject to further argument in post-hearing submissions on whether deficiencies regarding statements of financial interest can be held against a charter school in nonrenewal proceedings. (*See* Tr. vol. 10, at 163:21-165:5.) After considering the

<u>Exhibit</u>	<u>Description</u>	<u>Status</u>
SD[S] 22	Management Service Level Agreement	Admitted
SD[S] 23	Aspira Staffing Agreement	Admitted
SD[S] 24	Stetson FY 18-19 Final General Fund Budget	Admitted
SD[S] 25	Meeting Minutes- June 29, 2018 through January 2019	Admitted
SD[S] 26	Auditor General Report	Admitted
SD[S] 27	April 12, 2019 Stipulation	Admitted
SD[S] 28	School District of Philadelphia Directory of Citywide Elementary & Special Admission Middle Schools	N.O.

F. Olney Exhibits in the Olney Matter

<u>Exhibit</u>	<u>Description</u>	<u>Status</u>
Olney 1	Board Meeting Minutes SY 2011-2018	N.O.
Olney 2	2015 Keystone Exam School Level Data	N.O.
Olney 3	2016 Keystone Exam School Level Data	N.O.
Olney 4	2017 Keystone Exam School Level Data	N.O.
Olney 5	2018 Keystone Exam School Level Data	N.O.
Olney 6	Required Federal Reporting Measures for Philadelphia School District High Schools and All Philadelphia Charter Schools, SY 2014-2015 through 2016-2017	Excluded ⁹
Olney 7	Average Daily Attendance Data for Comparable School District Schools, SY 2013-2014 through 2016-2017	N.O.
Olney 8	PSD School Progress Chart	N.O.

submissions, this exhibit is admitted without qualification, for the reasons explained in Section II.A.3 of the accompanying Report.

⁹ Pages 309-356, 408-479, 525-561, 661-711, 712-744, 745-814, 1395-1404, 1537-1604, 1730-1762, 1990-2041, 2204-2254, 2255-2299, 2754-2786, 2787-2852, 2923-2973, 2974-3006, 3007-3078, 3276-3308 of this exhibit were initially admitted as public records, *see* Pa. R. Evid. Rule 803(8), subject to subject further argument in post-hearing submissions on whether they are relevant and material. (*See* Ex. HO[O] 107.) Upon consideration of those submissions, these pages are now excluded as irrelevant and immaterial for the reasons stated in Section III.H.6.j of the accompanying Report. Pages 2710-2753 (regarding Olney) were excluded as duplicative of other exhibits that have already been admitted. (*Id.*) All other pages of this exhibit were withdrawn by email on 4/29/19 at 2:16 PM. (the “Reilly Email”). (*See* Ex. HO[O] 106.)

<u>Exhibit</u>	<u>Description</u>	<u>Status</u>
Olney 9	Serious Incidents Data for Comparable School District Schools, SY 2014-2015 through 2016-2017	N.O.
Olney 10	Peer Schools vs. Olney – PVAAS Chart	N.O.
Olney 11	Schools Comparisons Chart	N.O.
Olney 12	Graduation Rates for Comparative School District Schools SY2010-2011 through 2013-2014	N.O.
Olney 13	2018 Student Handbook	N.O.
Olney 14	Olney Algebra AGI 2018	N.O.
Olney 15	Olney Literature AGI 2018	N.O.
Olney 16	Olney Biology AGI 2018	N.O.
Olney 17	Olney Charter High School Enrollment	N.O.
Olney 18	Olney Charter High School ESL Manual	N.O.
Olney 19	Olney Charter High School Mission Statement	Admitted
Olney 20	2015 By Laws	Admitted ¹⁰
Olney 21	2016 By Laws	Admitted
Olney 22	2017 By Laws	Admitted
Olney 23	2018 By Laws	Admitted
Olney 24	4-Year Keystone - Olney Charter High School	N.O.
Olney 25	A systematic review of factors linked to poor academic performance of disadvantaged students in science and maths in schools	Excluded ¹¹
Olney 26	Academic Initiatives	N.O.
Olney 27	Academic Presentation 6.29.18	N.O.
Olney 28	Achieve 3000 - Olney	Admitted
Olney 29	ASPIRA Schools Academic Scores and Enrollment Data	N.O.
Olney 30	Daily News article 201314 SPR Some hesitation with SPR report	Excluded

¹⁰ Exhibits Olney 20-23 were initially admitted subject to confirmation that they were the same as others that had been previously admitted as joint exhibits. I have now confirmed that they are the same as Exhibits JE[O] 51-054.

¹¹ Exhibits Olney 25, 30-31, 69, 72, 144, 148, 210-211, 254 and 276-277 were objected to as hearsay and the objection was sustained subject to reconsideration in light of further argument in post-hearing submissions. (See Tr. vol. 15, at 256:22-266:16; Tr. vol. 16, at 372:5-374:8.) After considering those submissions, the previous ruling is reaffirmed for the reasons explained in Section III.H.5 of the accompanying Report.

<u>Exhibit</u>	<u>Description</u>	<u>Status</u>
Olney 31	Daily news article on 201314 SPR Rating schools on more than test scores	Excluded
Olney 32	December 2018 JAG Monthly Report	Admitted
Olney 33	ELA FALL 2016-2017 - FALL 2018-2019 OCHS	Admitted
Olney 34	February2019 Monthly Report	Admitted
Olney 35	Feeder Schools for Olney	N.O.
Olney 36	Historical Performance Data 2011 - 2016	N.O.
Olney 37	How Renaissance schools were selected 2010	Admitted
Olney 38	HS-Directory-2017 School District of Philadelphia	Admitted
Olney 39	January 2019 JAG Monthly Report	Admitted
Olney 40	Major Points for Commentary OCHS and Stetson	N.O.
Olney 41	MAP - Growth-Fact-Sheet	Admitted
Olney 42	MAP - Normative-Data-2015	Admitted
Olney 43	MAP - SPR Quick Reference	Admitted
Olney 44	MAP Achievement in reading and math	Admitted
Olney 45	MAP for board 11.21	N.O.
Olney 46	MAP for board 4.24.17 Final	N.O.
Olney 47	MAP Student growth data 2017-18 SY	Admitted ¹²
Olney 48	Math FALL 2016-2017 - FALL 2018-2019 OCHS	N.O.
Olney 49	NCLB FAQs PDE memo on SPP and annual measurable objectives 201213	Admitted
Olney 50	November 2018 JAG Monthly Report	Admitted
Olney 51	OCHS and Stetson PVAAS Progress	N.O.
Olney 52	OCHS Attendance Data 2018	N.O.
Olney 53	October 2018 JAG Monthly Report	Admitted
Olney 54	OHCS PVAAS Scores	Admitted
Olney 55	Olney Charter High School – Kacer Renewal Update 2017	Admitted
Olney 56	Olney MAP growth Fall 2018-Winter 2019 MAP Growth	N.O.
Olney 57	Olney School Performance Profile Results 2018	Admitted
Olney 58	PA Renewal Requirements 2015	Admitted
Olney 59	PA State Report Card 2010 PSSA	Admitted

¹² Exhibit Olney 47 was admitted after an objection to it was withdrawn by email. (See Ex. HO[O] 105, 107.)

<u>Exhibit</u>	<u>Description</u>	<u>Status</u>
Olney 60	Pantoja Prep Charter School Presentation Dec 2017	N.O.
Olney 61	PDE changes to testing 2011 to 2015	Admitted
Olney 62	PDE- State Federal Reporting Measures priority focus 2015	Admitted
Olney 63	Peer School Demographics for Olney	Partial ¹³
Olney 64	Philadelphia's Renaissance Schools Initiative 2012	Admitted
Olney 65	Philadelphia's Renaissance Schools Initiative after Four Years	Admitted
Olney 66	Philadelphia's Renaissance Schools, A Report on Start Up and Early Implementation, May 2011	Admitted
Olney 67	Post-secondary points of pride 2017-2018 Year in review	Admitted
Olney 68	Post-secondary points of pride 2016-2017 Year in review	Admitted
Olney 69	Public School Notebook 2013 on SPP issues in Philadelphia	Excluded
Olney 70	Report on Review and Analysis of Resolutions of Nonrenewal for Aspira Stetson and Aspira Olney Alex Schuh FINAL March 6	Partial ¹⁴
Olney 71	Resume of Ellen Green	Admitted
Olney 72	RFA Report Abstract 2010	Excluded
Olney 73	School District of Philadelphia Renaissance Schools Initiative, Policy No. 141	Admitted
Olney 74	School Performance Profile Olney Charter High School 13-16	Admitted
Olney 75	School Performance Profile Olney Charter High School 16-17	Admitted
Olney 76	SDP RFP 260 - Renaissance Schools 2010	Admitted
Olney 77	SDP-Renaissance-Schools-Initiative-Policy	Admitted

¹³ Pages 42-57 and 63-74 of this exhibit were withdrawn and the remaining pages were excluded as irrelevant, subject to reconsideration after further argument in post-hearing submissions. (*See* Tr. vol. 6, at 216:6-9; Tr. vol. 9, at 219:15-222:16.) After considering those submissions, the previous ruling is reaffirmed.

¹⁴ The table on page 26 of this exhibit was admitted as a summary pursuant to Pa. R. Evid. 1006, but all other pages were objected to as hearsay. A ruling on that objection was deferred pending consideration of further argument in post-hearing submissions. (*See* Tr. vol.15, at 256:22-262:12.) After considering those submissions, the hearsay objection is sustained for the reasons explained in Section III.H.5 of the accompanying Report.

<u>Exhibit</u>	<u>Description</u>	<u>Status</u>
Olney 78	September 2018 Jobs for America's. Graduates Monthly Report	Admitted
Olney 79	SPR Business Rules 2015-2016	Admitted
Olney 80	SPR Business Rules 2016-2017	Admitted
Olney 81	SPR Business Rules 2017-2018	Admitted
Olney 82	SPR User Guide 2012-2013	Admitted
Olney 83	SPR User Guide 2013-2014	Admitted
Olney 84	SPR User Guide 2014-2015	Admitted
Olney 85	SPR User Guide 2015-2016	Admitted
Olney 86	SPR User Guide 2016-2017	Admitted
Olney 87	SPR User Guide 2017-2018	Admitted
Olney 88	STATISTICAL SCHOOL DATA Olney - Stetson	Admitted
Olney 89	Student Standardized Raw Test Score Data	N.O.
Olney 90	The School District of Philadelphia, Renaissance Schools Initiative Progress Report 2010-2011 through 2012-2013, December 2013	Admitted
Olney 91	timeline of Renaissance and district oversight and chaos RFA report 18 months	Admitted
Olney 92	What is the Renaissance School Initiative	Admitted
Olney 93	YEARLY STATISTICAL SCHOOL DATA	N.O.
Olney 94	2016-2017 Annual Financial Audit (Olney)	Admitted
Olney 95	ASPIRA and the School FINANCIAL POLICY MANUAL 20180220 V2	Admitted
Olney 96	ASPIRA and the School FINANCIAL POLICY MANUAL Federal grants	Admitted
Olney 97	ASPIRA Consolidated Financials 2017	Admitted
Olney 98	Budgeted FY19 Sch A	N.O.
Olney 99	Budgeted FY19 Sch B	N.O.
Olney 100	Closing Agenda - PNC Loan Docs 10.19.11	Admitted
Olney 101	Credit Facilities to Aspira, Inc. of Pennsylvania and certain of its affiliates 10.19.11	Admitted
Olney 102	FY19 CMO fee re original proposal vs budget	N.O.
Olney 103	Olney SDP Summary Report 2011-12	N.O.
Olney 104	Olney SDP Summary Report 2013-14	N.O.
Olney 105	Olney SDP Summary Report 2015-16	N.O.
Olney 106	Olney SDP Summary Report 2016-17	N.O.

<u>Exhibit</u>	<u>Description</u>	<u>Status</u>
Olney 107	Olney SDP Summary Report 2017-18	N.O.
Olney 108	PNC 2nd Amendment 20170317	Admitted
Olney 109	PNC ASPIRA Forbearance Agreement 2016- Signed	Admitted
Olney 110	PNC December 2017 Forbearance Agreement	Admitted
Olney 111	Position Control Policy- FINAL - Approved 2-15-18	Admitted
Olney 112	Resume - Thomas Darden 3-8-19	Admitted
Olney 113	Provident 2nd Forbearance Agreement	Admitted
Olney 114	Provident 3rd Forbearance Agreement	Admitted
Olney 115	Provident First Amendment to Forbearance Agreement (Notarized)	Admitted
Olney 116	Provident-Aspira - Credit Agreement (Execution version)	Admitted
Olney 117	PSERS payments Olney Charter High School	Admitted
Olney 118	Purchasing MANUAL SY 2018-19	Admitted
Olney 119	Resolution for Board President Designees Revised 11/19	N.O.
Olney 120	S&P Article - Charter School Medians Reflect Operating Pressures in a Growing Sector 06-27-13	N.O.
Olney 121	S&P Article - Funding Volatility May Cause Public Charter School Credit Quality to Deteriorate Further 06-27-13	N.O.
Olney 122	SDP 2015-2016 PDE 2028	Qualified ¹⁵
Olney 123	SDP 2016-2017 PDE 2028	Qualified
Olney 124	SDP 2017-2018 PDE 2028	Qualified
Olney 125	SDP PDE 2028 2014-2015	Qualified
Olney 126	12.14.17 src vote to ax 3 philly charters news article	N.O.
Olney 127	15.16 SDP PDE 363	N.O.
Olney 128	16.17 SDP PDE 363	N.O.
Olney 129	17.18 SDP PDE 363	N.O.
Olney 130	18.19 SDP PDE 363	N.O.

¹⁵ Exhibits Olney 122-125, 190, 205 and 217-220 were admitted only to show that the rate was adjusted, not as evidence that it was inappropriately calculated before or after the adjustment was made, subject to consideration of further argument regarding relevance in post-hearing submissions. (*See* Tr. vol. 8, at 58:18-75:3, 171:8-173:3.) After considering those submissions, the previous ruling is reaffirmed.

<u>Exhibit</u>	<u>Description</u>	<u>Status</u>
Olney 131	2014-2015 Student Code of Conduct -Olney High School	N.O.
Olney 132	2016-2017 Student Code of Conduct -Olney High School	N.O.
Olney 133	2017-2018 Student Code of Conduct -Olney High School	N.O.
Olney 134	2019-01-09 LT Stoner	N.O.
Olney 135	All Phila and CS Teacher Cert Data 2011 -Final	N.O.
Olney 136	All Phila and CS Teacher Cert Data 2013 -Final	N.O.
Olney 137	All Phila and CS Teacher Cert Data 2015 -Final	N.O.
Olney 138	ASPIRA Bilingual Cyber CS - SDP v. ASPIRA Bilingual Cyber CS - Pleadings - Order - Order Referring Question and Motions to Agency Head and Notifying P	Excluded ¹⁶
Olney 139	ASPIRA Charter Schools ACE feedback Email	N.O.
Olney 140	Auditor Kensington charter school had long time woes	N.O.
Olney 141	Brief in Opposition	Excluded
Olney 142	Climate narrative both schools and major points for commentary	N.O.
Olney 143	Corrective Action Plan for ESL ACCESS Olney	N.O.
Olney 144	ELC report-Safeguarding-Civil-Rights	Excluded
Olney 145	Emergency Certification Summaries OCHS and Stetson	N.O.
Olney 146	Enrollment Materials Timeline Communication to and from CSO	N.O.
Olney 147	Gary Samms, Esquire Bio	N.O.
Olney 148	Gold E Transition to High School RFA on Phila Special admission process	Excluded
Olney 149	Highlights and Growth-All Schools AGK	N.O.
Olney 150	Instructional Coaching and Evaluation Manual	N.O.
Olney 151	Ken Trujillo SRC 12.14.17 testimony	N.O.
Olney 152	Mastery Charter Elementary School report apps philly	Excluded ¹⁷

¹⁶ Exhibits Olney 138, 141 and 179 were excluded as argument, immaterial, cumulative, and prejudicial. (See Tr. vol. 16, at 346:14-354:13, 380:17-381:9.) See also footnote 15 above.

<u>Exhibit</u>	<u>Description</u>	<u>Status</u>
Olney 153	Mastery Charter High School 201506 990	Admitted ¹⁸
Olney 154	Mastery Charter High School 201606 990	Admitted
Olney 155	Mastery Charter High School 201706 990	Admitted
Olney 156	Mastery Foundation 201506 990	N.O.
Olney 157	Mastery Foundation 201606 990	N.O.
Olney 158	Mastery Pickett 201606 990	N.O.
Olney 159	Mastery Pickett 201706 990	N.O.
Olney 160	Mastery-Charter-Schools-PA-Board-Minutes-2018.10.01	Excluded
Olney 161	Mayer Krain 2014-08 Imani Education Circle Charter School	N.O.
Olney 162	Mayer Krain Letters	N.O.
Olney 163	Mayer Krain LinkedIn	N.O.
Olney 164	October 1 Enrollment Numbers and ELL and Sped for 2011 - 2018 by School	N.O.
Olney 165	Olney - Annual Report 2012-2013	N.O.
Olney 166	Olney - Annual Report 2013-2014	Admitted
Olney 167	Olney - Annual Report 2017-2018	N.O.
Olney 168	Olney - PDE Charter Annual Report 2011-2012	N.O.
Olney 169	Olney 2013-14 ACS LEA Staff	N.O.
Olney 170	Olney 2014-15 ACS LEA Staff	N.O.
Olney 171	Olney 2015-16 ACS LEA Staff	N.O.
Olney 172	Olney 2018-19 ACS LEA Staff	N.O.
Olney 173	Olney BSE Compliance Monitoring Review	N.O.
Olney 174	Olney East Charter Application Final Submitted	N.O.
Olney 175	Olney East Safety Report 07.08	Admitted
Olney 176	Olney East Safety Report 08.09	Admitted
Olney 177	Olney East Safety Report 09.10	Admitted

¹⁷ Exhibits Olney 152 and 160 were excluded as unauthenticated and hearsay. (*See* Tr. vol. 16, at 356:17-259:10.)

¹⁸ Exhibits Olney 153-155 were tentatively admitted subject to consideration of whether they are relevant to any defenses asserted in post-hearing submissions. (*See* Tr. vol.16, at 354:17-358:15.) Upon consideration of those submissions, these exhibits are now admitted as relevant and material to the defenses that common boards and related-party financial dealings were deemed acceptable for Mastery charter schools.

<u>Exhibit</u>	<u>Description</u>	<u>Status</u>
Olney 178	Olney East Safety Report 10.11	Admitted
Olney 179	Olney Pre-Hearing Motion	Excluded
Olney 180	Olney Response to 2017 Notice of Deficiency	N.O.
Olney 181	Olney Unified Charter Application Original 2010	N.O.
Olney 182	Olney Vacancy Report for October 2018	N.O.
Olney 183	Olney West Charter Application Final Submitted	N.O.
Olney 184	Olney West Safety Report 07.08	Admitted
Olney 185	Olney West Safety Report 08.09	Admitted
Olney 186	Olney West Safety Report 09.10	Admitted
Olney 187	Olney West Safety Report 10.11	Admitted
Olney 188	PA Mastery Charter School - Pickett Campus 2017	N.O.
Olney 189	Penn Data Comparison - Olney	N.O.
Olney 190	Rate Change Notification 2017	Qualified
Olney 191	RED UICS - Renewal Report - 2018	Excluded ¹⁹
Olney 192	RED Universal Alcorn Charter School - Renewal Report - 2018	Excluded ²⁰
Olney 193	RED W08 Inquiry Renewal 2017	Excluded
Olney 194	RED W13 PrepCS Renewal 2017	Excluded
Olney 195	RED X21 Universal Creighton Renewal 2017	Excluded
Olney 196	Roger Kligerman LinkedIn	N.O.
Olney 197	SRC Letter to Charter School CEOs re Per Pupil Funding Levels 07-03-14	N.O.
Olney 198	SRC Minutes-6.30.14-Combined	N.O.
Olney 199	SRC-10 Resolution Approving Antonia Pantoja CS 05-15-13	N.O.
Olney 200	SRC-13 Resolution Approving Eugenia de Hostos CS 05-15-13	N.O.
Olney 201	The Day - New London mayor's appointment failure - News from southeastern Connecticut	N.O.
Olney 202	The Philadelphia Great Schools Compact 12-20-11	N.O.

¹⁹ A ruling on the relevance of Exhibit Olney 191 was initially deferred pending consideration of further argument in post-hearing submissions. (*See* Tr. vol. 8, at 171:12-173:21.) I now sustain the relevance objection.

²⁰ Exhibits Olney 192-195 and 206 were excluded as unauthenticated and irrelevant. (*See* Tr. vol. 16, at 359:11-362:18.)

<u>Exhibit</u>	<u>Description</u>	<u>Status</u>
Olney 203	Tim Hanser LinkedIn	N.O.
Olney 204	Trujillo Email to Wilkerson 12.13.17	N.O.
Olney 205	updated per pupil ltr - 04.18.2016	Qualified
Olney 206	W02 Harambee Renewal 2016	Excluded
Olney 207	Olney Financial ratios	Admitted
Olney 208	Interim Statement of Activities 2018	N.O.
Olney 209	Report of Gary Samms 3.7.19	Partial ²¹
Olney 210	An Examination of Pennsylvania School Performance Profile Scores	Excluded
Olney 211	Phila. School District Trying To Fix School Rating System – CBS Philly	Excluded
Olney 212	Philadelphia School District’s charter head stepping down	N.O.
Olney 213	Superintendent discusses tenure, year’s accomplishments	N.O.
Olney 214	Resume - Alex Schuh	Admitted
Olney 215	Kligerman Emails 2013	Admitted
Olney 216	Olney ELL Roster 2_7_19	N.O.
Olney 217	SDP Calculated 363 15-16 7.6.15	Qualified
Olney 218	SDP Calculated 363 16-17 6.21.16	Qualified
Olney 219	SDP Calculated 363 17-18 6.9.17	Qualified
Olney 220	SDP Calculated 363 18-19 6.14.18	Qualified
Olney 221	Trujillo Letter to Gutman 8.10.16	N.O.
Olney 222	Trujillo Letter to Gutman 9.14.16	N.O.
Olney 223	Trujillo Letter to Gutman 10.11.16	N.O.
Olney 224	Trujillo Report to the School Reform Commission 10.12.16	N.O.
Olney 225	Trujillo Letter to Gutman 1.29.18	N.O.
Olney 226	Mr. Kligerman’s notes	N.O.
Olney 227	Antonia Pantoja Charter School - Renewal Charter - 2018	Admitted ²²

²¹ Pages 6-14 of Exhibit Olney 209 were admitted, but all other pages were objected to as hearsay. A ruling on that objection was deferred pending consideration of further argument in post-hearing submissions. (See Tr. vol. 15, at 285:10-288:9.) After considering those submissions, the hearsay objection is sustained for the reasons explained in Section III.H.5.b of the accompanying Report.

<u>Exhibit</u>	<u>Description</u>	<u>Status</u>
Olney 228	Eugenio Maria de Hostos Charter School - Renewal Charter - 2018	Admitted
Olney 229	Antonia Pantoja Charter School - 2015 ACE	Admitted
Olney 230	Antonia Pantoja Charter School - 2016 ACE	Admitted
Olney 231	Antonia Pantoja Charter School - Renewal Report - 2013	N.O.
Olney 232	Antonia Pantoja Charter School - Renewal Report - 2018	N.O.
Olney 233	Eugenio Maria de Hostos Charter School - 2015 ACE	Admitted
Olney 234	Eugenio Maria de Hostos Charter School - 2016 ACE	Admitted
Olney 235	Eugenio Maria de Hostos Charter School - Renewal Report - 2013	N.O.
Olney 236	Eugenio Maria de Hostos Charter School - Renewal Report - 2018	N.O.
Olney 237	Chao 060118 email w attachments re Charter Pantoja	Admitted
Olney 238	Chao 060118 email w. attachments re Charter Hostos	Admitted
Olney 239	Excerpt - Philadelphia Charter School Renewal Evaluations 2017-2018	N.O.
Olney 240	James Parsons Resume	N.O.
Olney 241	Richard Allen Preparatory C.S. - Release and Settlement Agreement - fully executed	Excluded ²³
Olney 242	Richard Allen Preparatory Charter School - 2015 ACE	Excluded
Olney 243	Richard Allen Preparatory Charter School - 2015 Renewal Report	Excluded
Olney 244	Richard Allen Preparatory Charter School - 2017 ACE	Excluded

²² Exhibits Olney 227-230, 233-234 and 237-238 were initially admitted subject to consideration of whether they are relevant and material to any defenses asserted in post-hearing submissions. (See Tr. vol. 16, at 362:20-366:21.) Upon consideration of those submissions, these exhibits are now admitted as relevant to Olney's argument that the financial dealings among ASPIRA managed schools should be disregarded because the CSO recommended a different outcome for Antonia Pantoja Charter School ("Pantoja") and Eugenio de Hostos Charter School ("Hostos").

²³ Exhibits Olney 241-246 were excluded as irrelevant and prejudicial. (See Tr. vol. 16, at 367:10-368:1.)

<u>Exhibit</u>	<u>Description</u>	<u>Status</u>
Olney 245	Richard Allen Preparatory Charter School - 2017 Notice of Deficiency	Excluded
Olney 246	Richard Allen Preparatory Charter School - 2017 Supplemental Renewal Report	Excluded
Olney 247	ASPIRA charter provider on thin ice, Philly School District says - WHYY	Excluded ²⁴
Olney 248	Attendance Summary – 2014-2017	Admitted
Olney 249	RFP 286- Renaissance Schools Year II - FINAL 11-16-10	Admitted
Olney 250	SPI Manual-1	Admitted
Olney 251	SPI Q&A	Admitted
Olney 252	Imagine 2014 - Five-Year Strategic Plan	Admitted
Olney 253	Imagine 2014- A Year 2 Update	Admitted
Olney 254	Teachers and students call for more resources for growing English Learner population _ The notebook	Excluded
Olney 255	Pew Report - Getting Into High School in Phila	Admitted
Olney 256	Steel parents file grievance against SAC charter vote _ Parents United for Public Education	N.O.
Olney 257	Steel parents win decisive vote to keep school public _ Parents United for Public Education	N.O.
Olney 258	Renaissance Schools Advisory Board Final Report 2009	Admitted
Olney 259	SRC Minutes 6.21.18 Charter Schools	N.O.
Olney 260	Comparison of Renewal Report Domain Questions 15-16	N.O.
Olney 261	Grade Breakdown 9th Grade Fall_Redacted	N.O.
Olney 262	Grade Breakdown 9th Grade Winter_Redacted	N.O.
Olney 263	Grade Breakdown 10th Grade Fall_Redacted	N.O.
Olney 264	Grade Breakdown 10th Grade Winter_Redacted	N.O.
Olney 265	Grade Report Grade 9 Fall English Only_Redacted	N.O.
Olney 266	Grade Report Grade 9 Winter English Only_Redacted	N.O.
Olney 267	Grade Report Grade 10 Fall_Redacted	N.O.
Olney 268	Grade Report Grade 10 Winter_Redacted	N.O.

²⁴ Exhibit Olney 247 was excluded as hearsay. (*See* Tr. vol. 16, at 369:18-22.)

<u>Exhibit</u>	<u>Description</u>	<u>Status</u>
Olney 269	2015 map norms for student and school achievement status and growth	Admitted
Olney 270	Docket 289 MD 2017 - Antonia Pantoja Charter School, et al. v. Commonwealth	Excluded ²⁵
Olney 271	Docket - Antonia Pantoja Charter School, et al. v. School Dist	Excluded
Olney 272	Auditor General's Report - School District of Phila 2016	Excluded ²⁶
Olney 273	Auditor General's Report - SDP's Oversight of Charters 2016	N.O.
Olney 274	Can we trust the Philadelphia District's yardstick for school quality - WHYY	N.O.
Olney 275	Phila. District Suspends School-Rating System - Education Week	N.O.
Olney 276	Propel Charter School Federal Agreement	Excluded
Olney 277	Appendix A to Propel Official Statement	Excluded
Olney 278	Yeslli Ann Hernandez Profile	N.O.
Olney 279	Schuh Comparison of Aspira Stetson CS to Richard Allen Prep CS and Philadelphia District Schools	N.O.
Olney 280	Schuh Source Documents - Comparison of Aspira Stetson CS to Richard Allen Prep CS	N.O.
Olney 281	Testimony from Non-Renewal Hearing – Eastern University Academy Charter School	Partial ²⁷
Olney 282	SDP School Performance Index PowerPoint 2011	Admitted
Olney 283	The Widening Academic Achievement Gap Between the Rich and the Poor - Reardon	N.O.
Olney 284	SDP SPR SY1718 Peer Group Generation	Admitted

²⁵ Exhibits Olney 270 and 271 were excluded as irrelevant and immaterial. (*See* Tr. vol. 16, at 369:23-370:4.) *See also* footnote 15 above.

²⁶ Exhibit Olney 272 was excluded as hearsay. (*See* Tr. vol. 16, at 271:6-272:4.)

²⁷ Pages 44:10-47:17, 49:24-50:22, 56:21-58:7, 70:19-71:18, 92:14-18, 93:2-23, 97:2-98:12, 101:1-10, 105:22-106:9, 115:16-116:17, 124:20-125:24, 133:5-24, 134:24-135:7, 136:21-138:4 and 154:5-15 of Exhibit Olney 281 were admitted as an opposing party's statements pursuant to Pa. R. Evid. 803(25), subject to consideration of whether they are relevant and material to any defenses asserted in post-hearing submissions. Upon consideration of those submissions, these pages are now admitted for any light they might shed on the grounds for nonrenewal asserted at the hearing. All other portions of this exhibit were withdrawn by the Reilly Email, so those portions are not admitted. (*See* Ex. HO[O] 106.)

<u>Exhibit</u>	<u>Description</u>	<u>Status</u>
Olney 285	PNC Transaction 2011 - 5,004,005.47 Term Loan Documents	Admitted
Olney 286	PNC Transaction 2011 - 629,554.66 Term Loan Documents	Admitted
Olney 287	PNC Transaction 2011 - 50,000 Loan to Eugenio Documents	Admitted
Olney 288	PNC Transaction 2011 - 50,000 Loan to Stetson Documents	Admitted
Olney 289	PNC Transaction 2011 - Collateral Documents	Admitted
Olney 290	PNC Transaction 2011 - Borrowers Documents	Admitted
Olney 291	SDP Renaissance Policy 407	Withdrawn
Olney 292	Provident Transaction - 4-22-2016	Admitted
Olney 293	Samms Letter in re ASPIRA, Olney, Stetson 3.25.19	Excluded ²⁸
Olney 294	Provident Opinion Letter from Borrower's Counsel - 4.22.16	Admitted
Olney 295	2019-03-26 Subpoena to Olney with Responsive Documents	Admitted
Olney 296	Krain Notes	Admitted
Olney 297	PDE RTK Request 3.14.19	Excluded ²⁹
Olney 298	PDE RTK Extension 3.21.19	Excluded
Olney 299	PDE RTK Final Response 4.11.19	Excluded
Olney 300	Minority-Led Charter Schools Briefing 3.29.19	Admitted ³⁰

G. Stetson Exhibits in the Stetson Matter

<u>Exhibit</u>	<u>Description</u>	<u>Status</u>
Stetson 1	2018 Board of Trustees Bylaws	Excluded ³¹

²⁸ Exhibit Olney 293 was objected to as hearsay. A ruling on that objection was deferred pending consideration of further argument in post-hearing submissions. (*See* Tr. vol. 15, at 286:6-288:9.) After considering those submissions, the hearsay objection is sustained for the reasons explained in Section III.H.5 of the accompanying Report.

²⁹ Exhibits Olney 297-299 were excluded as irrelevant. (*See* Tr. vol. 16, at 375:14-380:9.)

³⁰ Exhibit Olney 300 was admitted after the hearing was concluded, subject to argument about its relevance, materiality and significance in post-hearing submissions. (*See* Ex. HO[O] 109.) After considering those submissions, it is admitted as relevant and material to the argument that there are inequities in the charter renewal process.

<u>Exhibit</u>	<u>Description</u>	<u>Status</u>
Stetson 2	2017-2018 Board of Trustees Schedule	Excluded
Stetson 3	2018-2019 Board of Trustees Schedule	Excluded
Stetson 4	Board Meeting Minutes SY 2017-2018	Partial ³²
Stetson 5	Required Federal Reporting Measures for Philadelphia School District Middle Schools within a 2 Mile Geographic Radius and All Philadelphia Charter Schools, SY 2014-2015 through 2016-2017	Partial ³³
Stetson 6	2013 School Progress Report Scores for all Philadelphia Charter Schools and School District Schools	N.O.
Stetson 7	2014 School Progress Report Scores for all Philadelphia Charter Schools and School District Schools	N.O.
Stetson 8	2015 School Progress Report Scores for all Philadelphia Charter Schools and School District Schools	N.O.
Stetson 9	2016 School Progress Report Scores for all Philadelphia Charter Schools and School District Schools	N.O.
Stetson 10	2017 School Progress Report Scores for all Philadelphia Charter Schools and School District Schools	N.O.

³¹ Exhibits Stetson 1-3 were objected to as unauthenticated, and a ruling on the objection was initially deferred pending determination of whether they are the same as other documents that had been previously admitted as joint exhibits. (Tr. vol. 16, at 381:18-382:12.) I have now confirmed that they are not included among the joint exhibits, so the objection is sustained.

³² Exhibit Stetson 4 was objected to as unauthenticated, and a ruling on the objection was initially deferred pending determination of whether it is the same as other documents that had been previously admitted as joint exhibits. (Tr. vol. 16, at 381:18-382:12.) I have now confirmed that pages 8-67 are included in Exhibit J 44, so those pages are admitted. However, the objection is sustained as to pages 1-7, because they are not included in the joint exhibits.

³³ Pages 177-221, 525-569, 669-719, 720-764, 901-922, 1615-1673, 1967-2018, 2085-2129, 2181-2231, 2232-2276, 2414-2464, 2856-2906, 2907-2952, 2953-3003, 3489-3539 of Exhibit Stetson 5 exhibit were admitted as public records pursuant to Pa. R. Evid. Rule 803(8), subject to consideration of whether they are relevant and material to any defenses asserted in post-hearing submissions. (*See* Ex. HO[S] 109.) Upon consideration of those submissions, these pages are now excluded as irrelevant and immaterial for the reasons stated in Section III.H.6.j of the accompanying Report. Pages 3076-3126 (regarding Stetson) were excluded as duplicative of other exhibits that have already been admitted. (*Id.*) All other pages of this exhibit were withdrawn by the Reilly Email. (*See* Ex. HO[S] 108.)

<u>Exhibit</u>	<u>Description</u>	<u>Status</u>
Stetson 11	Year over Year School Progress Report Scores for all Philadelphia Charter Schools and School District Schools	N.O.
Stetson 12	2018-2019 John B. Stetson Charter School Student Handbook	N.O.
Stetson 13	John B. Stetson Charter School Enrollment Packet-current	N.O.
Stetson 14	ASPIRA, Inc. Schools' ESL Manual – current	N.O.
Stetson 15	2017 PSSA and Map Spring	Admitted
Stetson 16	2017-2018 PSSA. PVAAS- Aspira Schools Final	N.O.
Stetson 17	3-yr PSSA - John B Stetson Charter Middle	N.O.
Stetson 18	A systematic review of factors linked to poor academic performance of disadvantaged students in science and maths in schools	Excluded ³⁴
Stetson 19	Academic Initiatives	N.O.
Stetson 20	Academic Presentation 6.29.18	N.O.
Stetson 21	ASPIRA Schools Academic Scores and Enrollment Data	N.O.
Stetson 22	CSO Stetson Renewal Report - 1.22.15	Admitted
Stetson 23	CSO Stetson RSV Report 2014	Admitted
Stetson 24	Daily News article 201314 SPR Some hesitation with SPR report	Excluded
Stetson 25	Daily news article on 201314 SPR Rating schools on more than test scores	Excluded
Stetson 26	ELA FALL 2016-2017 - FALL 2018-2019 JBS	Admitted
Stetson 27	Feeder Schools for Stetson	Admitted
Stetson 28	Historical Performance Data 2011 - 2016	N.O.
Stetson 29	How Renaissance schools were selected 2010	Admitted
Stetson 30	IRLA Evidence	N.O.
Stetson 31	John-B.-Stetson-Charter-School Charter-Improvement-Report 3-23-2018	Admitted
Stetson 32	Major Points for Commentary OCHS and Stetson	N.O.

³⁴ Exhibits Stetson 18, 24, 25, 54, 101, 142, 146, 194 and 235 were objected to as hearsay and the objection was sustained subject to reconsideration in light of further argument in post-hearing submissions. (*See* Tr. vol. 15, at 256:22-266:16, 273:8-274:21; Tr. vol. 16, at 372:5-374:8.) After considering those submissions, the previous ruling is reaffirmed for the reasons explained in Section III.H.5 of the accompanying Report.

<u>Exhibit</u>	<u>Description</u>	<u>Status</u>
Stetson 33	MAP - Growth-Fact-Sheet	Admitted
Stetson 34	MAP - Normative-Data-2015	Admitted
Stetson 35	MAP - SPR Quick Reference	Admitted
Stetson 36	MAP - Stetson Historical Data	Admitted
Stetson 37	MAP - Stetson Historical Data (disaggregated)	Admitted
Stetson 38	MAP for board 11.21	N.O.
Stetson 39	MAP for board 4.24.17 Final	N.O.
Stetson 40	MATH FALL 2016-2017 - FALL 2018-2019 JBS	N.O.
Stetson 41	NCLB FAQs PDE memo on SPP and annual measurable objectives 201213	Admitted
Stetson 42	OCHS and Stetson PVAAS Progress	N.O.
Stetson 43	PA Renewal Requirements 2015	Admitted
Stetson 44	PA State Report Card 2010 PSSA	Admitted
Stetson 45	Pantoja Prep Charter School Presentation Dec 2017	N.O.
Stetson 46	PDE changes to testing 2011 to 2015	Admitted
Stetson 47	PDE- State Federal Reporting Measures priority focus 2015	Admitted
Stetson 48	Peer School Demographics for Stetson	Partial ³⁵
Stetson 49	Philadelphia's Renaissance Schools Initiative 2012	Admitted
Stetson 50	Philadelphia's Renaissance Schools Initiative after Four Years	Admitted
Stetson 51	Philadelphia's Renaissance Schools, A Report on Start Up and Early Implementation, May 2011	Admitted
Stetson 52	PSSA Growth Report July 20 2017	N.O.
Stetson 53	PSSA School Level Data-JBS	N.O.
Stetson 54	Public School Noteboook 2013 on SPP issues in Philadelphia	Excluded
Stetson 55	Report on Review and Analysis of Resolutions of Nonrenewal for Aspira Stetson and Aspira Olney Alex Schuh FINAL March 6	Partial ³⁶

³⁵ Only pages 1-2 and 4-21 of Exhibit Stetson 48 were admitted (all other pages were withdrawn). (See Tr. vol. 14, at 392:10-294:24.)

³⁶ The tables on pages 5-6 and 23 of Exhibit Stetson 55 were admitted as summaries (*see* Pa. R. Evid. 1006), but all other pages were objected to as hearsay. A ruling on that objection was deferred pending consideration of further argument in post-hearing submissions. (*See* Tr.

<u>Exhibit</u>	<u>Description</u>	<u>Status</u>
Stetson 56	Resume of Gregory Mangels	N.O.
Stetson 57	Resume of Thomas Mullin	Admitted
Stetson 58	School District of Philadelphia Renaissance Schools Initiative, Policy No. 141	Admitted
Stetson 59	School Improvement Plan - Stetson 2017	Admitted
Stetson 60	School Performance Profile John B 13-16	Admitted
Stetson 61	School Performance Profile John B 16-17	Admitted
Stetson 62	School Performance Profile John B Fast Facts 16-17	Admitted
Stetson 63	SDP RFP 260 - Renaissance Schools 2010	Admitted
Stetson 64	SDP-Renaissance-Schools-Initiative-Policy	Admitted
Stetson 65	SPR Business Rules 2015-2016	Admitted
Stetson 66	SPR Business Rules 2016-2017	Admitted
Stetson 67	SPR Business Rules 2017-2018	Admitted
Stetson 68	SPR User Guide 2012-2013	Admitted
Stetson 69	SPR User Guide 2013-2014	Admitted
Stetson 70	SPR User Guide 2014-2015	Admitted
Stetson 71	SPR User Guide 2015-2016	Admitted
Stetson 72	SPR User Guide 2016-2017	Admitted
Stetson 73	SPR User Guide 2017-2018	Admitted
Stetson 74	STATISTICAL SCHOOL DATA Olney - Stetson	N.O.
Stetson 75	Stetson Job Description Introduction	N.O.
Stetson 76	Stetson Charter High School – Kacer Renewal Update 2017	Admitted
Stetson 77	Stetson PVAAS Scores	Admitted
Stetson 78	Stetson School Performance Profile Results	Admitted
Stetson 79	Student Standardized Raw Test Score Data	Admitted
Stetson 80	The School District of Philadelphia, Renaissance Schools Initiative Progress Report 2010-2011 through 2012-2013, December 2013	Admitted
Stetson 81	timeline of Renaissance and district oversight and chaos RFA report 18 months	Admitted
Stetson 82	What is the Renaissance School Initiative	Admitted
Stetson 83	YEARLY STATISTICAL SCHOOL DATA	Admitted

vol. 15, at 256:22-262:12, 273:8-274:21.) After considering those submissions, the hearsay objection is sustained for the reasons explained in Section III.H.5 of the accompanying Report.

<u>Exhibit</u>	<u>Description</u>	<u>Status</u>
Stetson 84	2016-2017 Annual Financial Audit (JohnBStetsoCharterSchool)	Admitted
Stetson 85	All PSERS payments for John B. Stetson	Admitted
Stetson 86	ASPIRA and the School FINANCIAL POLICY MANUAL 20180220 V2 (2)	Admitted
Stetson 87	ASPIRA and the School FINANCIAL POLICY MANUAL Federal grants	Admitted
Stetson 88	ASPIRA Consolidated Financials 2017	Admitted
Stetson 89	Budgeted FY19 Sch A	N.O.
Stetson 90	Budgeted FY19 Sch B	N.O.
Stetson 91	Closing Agenda - PNC Loan Docs 10.19.11	Admitted
Stetson 92	Credit Facilities to Aspira, Inc. of Pennsylvania and certain of its affiliates 10.19.11	Admitted
Stetson 93	FY19 CMO fee re original proposal vs budget	N.O.
Stetson 94	Stetson Financial Ratios	Admitted
Stetson 95	Interim Statement of Activities 2018	N.O.
Stetson 96	Report of Gary Samms 3.7.19	Partial ³⁷
Stetson 97	PNC 2nd Amendment 20170317	Admitted
Stetson 98	PNC ASPIRA Forbearance Agreement 2016- Signed	Admitted
Stetson 99	PNC December 2017 Forbearance Agreement	Admitted
Stetson 100	Position Control Policy- FINAL - Approved 2-15-18	Admitted
Stetson 101	An Examination of Pennsylvania School Performance Profile Scores	Excluded
Stetson 102	Provident 2nd Forbearance Agreement	Admitted
Stetson 103	Provident 3rd Forbearance Agreement	Admitted
Stetson 104	Provident First Amendment to Forbearance Agreement (Notarized)	Admitted
Stetson 105	Provident-Aspira - Credit Agreement (Execution version)	Admitted
Stetson 106	Resume - Thomas Darden 3-8-19	Admitted
Stetson 107	Purchasing MANUAL SY 2018-19	Admitted

³⁷ Pages 6-14 of Exhibit Stetson 96 were admitted, but all other pages were objected to as hearsay. A ruling on that objection was deferred pending consideration of further argument in post-hearing submissions. (See Tr. vol. 15, at 285:10-288:9.) After considering those submissions, the hearsay objection is sustained for the reasons explained in Section III.H.5.b of the accompanying Report.

<u>Exhibit</u>	<u>Description</u>	<u>Status</u>
Stetson 108	Resolution for Board President Designees Revised 11719	N.O.
Stetson 109	S&P Article - Charter School Medians Reflect Operating Pressures in a Growing Sector 06-27-13	N.O.
Stetson 110	S&P Article - Funding Volatility May Cause Public Charter School Credit Quality to Deteriorate Further 06-27-13	N.O.
Stetson 111	SDP 2015-2016 PDE 2028	Qualified ³⁸
Stetson 112	SDP 2016-2017 PDE 2028	Qualified
Stetson 113	SDP 2017-2018 PDE 2028	Qualified
Stetson 114	SDP PDE 2028 2014-2015	Qualified
Stetson 115	Stetson SDP Summary Report 2011-12	N.O.
Stetson 116	Stetson SDP Summary Report 2012-13	N.O.
Stetson 117	Stetson SDP Summary Report 2013-14	N.O.
Stetson 118	Stetson SDP Summary Report 2014-15	N.O.
Stetson 119	Stetson SDP Summary Report 2015-16	N.O.
Stetson 120	Stetson SDP Summary Report 2016-17	N.O.
Stetson 121	Stetson SDP Summary Report 2017-18	N.O.
Stetson 122	12.14.17 src vote to ax 3 philly charters news article	N.O.
Stetson 123	15.16 SDP PDE 363	N.O.
Stetson 124	16.17 SDP PDE 363	N.O.
Stetson 125	17.18 SDP PDE 363	N.O.
Stetson 126	18.19 SDP PDE 363	N.O.
Stetson 127	2014-2015 Student Code of Conduct - John B. Stetson Charter School	N.O.
Stetson 128	2015-2016 Student Code of Conduct - John B. Stetson Charter School	N.O.
Stetson 129	2016-2017 Student Code of Conduct - John B. Stetson Charter School	N.O.
Stetson 130	2017-2018 Student Code of Conduct - John B. Stetson Charter School	N.O.

³⁸ Exhibits Stetson 111-114, 165 and 199-202 were admitted to show that the rate was adjusted, not as evidence that it was inappropriately calculated before or after the adjustment was made, subject to consideration of further argument regarding relevance in post-hearing submissions. *See* Tr. vol. 8, at 58:18-75:3, 171:8-173:3; Tr. vol. 13, at 52:12-54:14. After considering those submissions, the previous ruling is reaffirmed.

<u>Exhibit</u>	<u>Description</u>	<u>Status</u>
Stetson 131	2019-01-09 LT Stoner	Qualified ³⁹
Stetson 132	All Phila and CS Teacher Cert Data 2011 -Final	N.O.
Stetson 133	All Phila and CS Teacher Cert Data 2013 -Final	N.O.
Stetson 134	All Phila and CS Teacher Cert Data 2015 -Final	N.O.
Stetson 135	ASPIRA Bilingual Cyber CS - SDP v. ASPIRA Bilingual Cyber CS - Pleadings - Order - Order Referring Question and Motions to Agency Head and Notifying P	Qualified
Stetson 136	ASPIRA Charter Schools ACE feedback Email	N.O.
Stetson 137	Auditor Kensington charter school had long time woes	N.O.
Stetson 138	Brief in Opposition	Qualified
Stetson 139	Climate narrative both schools and major points for commentary	N.O.
Stetson 140	CSO Rebuttal for JBS	N.O.
Stetson 141	EL Stetson Description	N.O.
Stetson 142	ELC report-Safeguarding-Civil-Rights	Excluded
Stetson 143	Emergency Certification Summaries OCHS and Stetson	N.O.
Stetson 144	Enrollment Materials Timeline Communication to and from CSO	N.O.
Stetson 145	Gary Samms, Esquire Bio	Admitted
Stetson 146	Gold E Transition to High School RFA on Phila Special admission process	Excluded
Stetson 147	Highlights and Growth-All Schools AGK	N.O.
Stetson 148	Instructional Coaching and Evaluation Manual	N.O.
Stetson 149	Ken Trujillo SRC 12.14.17 testimony	N.O.
Stetson 150	Mastery Charter Elementary School report apps philly	Excluded ⁴⁰
Stetson 151	Mastery Charter High School 201506 990	Admitted ⁴¹

³⁹ Exhibits Stetson 131, 135 and 138 were subject to the same ruling as Exhibits Stetson 111-114 and 165. (Tr. vol. 16, at 382:18-383:22.)

⁴⁰ Stetson 150 was excluded as unauthenticated and hearsay. (See Tr. vol. 16, at 383:23-384:8.)

⁴¹ Exhibits Stetson 151-153 were tentatively admitted subject to consideration of whether they are relevant to any defenses asserted post-hearing submissions. (See Tr. vol.16, at 354:17-

<u>Exhibit</u>	<u>Description</u>	<u>Status</u>
Stetson 152	Mastery Charter High School 201606 990	Admitted
Stetson 153	Mastery Charter High School 201706 990	Admitted
Stetson 154	Mastery Foundation 201506 990	N.O.
Stetson 155	Mastery Foundation 201606 990	N.O.
Stetson 156	Mastery Pickett 201606 990	N.O.
Stetson 157	Mastery Pickett 201706 990	N.O.
Stetson 158	Mastery-Charter-Schools-PA-Board-Minutes-2018.10.01	Excluded ⁴²
Stetson 159	Mayer Krain 2014-08 Imani Education Circle Charter School	N.O.
Stetson 160	Mayer Krain Letters	N.O.
Stetson 161	Mayer Krain LinkedIn	N.O.
Stetson 162	October 1 Enrollment Numbers and ELL and Sped for 2011 - 2018 by School	N.O.
Stetson 163	PA Mastery Charter School - Pickett Campus 2017	N.O.
Stetson 164	Penn Data Comparison - Stetson	N.O.
Stetson 165	Rate Change Notification 2017	Qualified
Stetson 166	RED UICS - Renewal Report - 2018	Excluded ⁴³
Stetson 167	RED Universal Alcorn Charter School - Renewal Report - 2018	Excluded ⁴⁴
Stetson 168	RED W08 Inquiry Renewal 2017	Excluded
Stetson 169	RED W13 Prep CS Renewal 2017	Excluded
Stetson 170	RED X21 Universal Creighton Renewal 2017	Excluded
Stetson 171	Roger Kligerman LinkedIn	N.O.
Stetson 172	Safe Schools ACS and LEA Profile-Stetson 2014-2015	Admitted

358:15, 384:9-16.) Upon consideration of those submissions, these exhibits are now admitted as relevant and material to the defenses that common boards and related-party financial dealings were deemed acceptable for Mastery charter schools.

⁴² Exhibit Stetson 158 was excluded as unauthenticated and hearsay. (*See* Tr. vol. 16, at 356:17-259:10, 384:17-22.)

⁴³ A ruling on the relevance of Exhibit Stetson 166 was initially deferred pending consideration of post-hearing submissions. (*See* Tr. vol. 8, at 171:12-173:21; Tr. vol. 13, at 53:14-54:14.) However, I now confirm that it is irrelevant.

⁴⁴ Exhibit Stetson 167-170 were excluded as unauthenticated and irrelevant. (*See* Tr. vol. 16, at 359:11-362:18, 385:14-387:1.)

<u>Exhibit</u>	<u>Description</u>	<u>Status</u>
Stetson 173	Safe Schools ACS and LEA Profile-Stetson 2015-2016	Admitted
Stetson 174	Safe Schools ACS and LEA Profile-Stetson 2017-2018	Admitted
Stetson 175	Safe Schools ACS and School Profile Stetson 2016-2017	Admitted
Stetson 176	SRC Letter to Charter School CEOs re Per Pupil Funding Levels 07-03-14	N.O.
Stetson 177	SRC Minutes-6.30.14-Combined	N.O.
Stetson 178	SRC-10 Resolution Approving Antonia Pantoja CS 05-15-13	N.O.
Stetson 179	SRC-13 Resolution Approving Eugenia de Hostos CS 05-15-13	N.O.
Stetson 180	Stetson 2013-14 ACS LEA Staff	N.O.
Stetson 181	Stetson 2014-15 ACS LEA Staff	N.O.
Stetson 182	Stetson 2015-16 ACS LEA Staff	N.O.
Stetson 183	Stetson 2018-19 ACS LEA Staff	N.O.
Stetson 184	Stetson BSE Compliance Monitoring Review	N.O.
Stetson 185	Stetson PreHearing Motion	Excluded
Stetson 186	Stetson Response to 2017 Notice of Deficiency	Admitted
Stetson 187	Stetson Video	Excluded ⁴⁵
Stetson 188	The Day - New London mayor's appointment failure - News from southeastern Connecticut	N.O.
Stetson 189	The Philadelphia Great Schools Compact 12-20-11	N.O.
Stetson 190	Tim Hanser LinkedIn	N.O.
Stetson 191	Trujillo Email to Wilkerson 12.13.17	N.O.
Stetson 192	updated per pupil ltr - 04.18.2016	N.O.
Stetson 193	W02 Harambee Renewal 2016	Excluded
Stetson 194	Phila. School District Trying To Fix School Rating System – CBS Philly	Excluded
Stetson 195	Philadelphia School District's charter head stepping down	N.O.
Stetson 196	Superintendent discusses tenure, year's accomplishments	N.O.

⁴⁵ Exhibit Stetson 187 was objected to as unauthenticated and hearsay, and both objections were sustained. (*See* Tr. vol. 12, at 321:21-325:24.)

<u>Exhibit</u>	<u>Description</u>	<u>Status</u>
Stetson 197	Resume - Alex Schuh	Admitted
Stetson 198	Kligerman Emails 2013	Admitted
Stetson 199	SDP Calculated 363 15-16 7.6.15	Qualified
Stetson 200	SDP Calculated 363 16-17 6.21.16	Qualified
Stetson 201	SDP Calculated 363 17-18 6.9.17	Qualified
Stetson 202	SDP Calculated 363 18-19 6.14.18	Qualified
Stetson 203	Trujillo Letter to Gutman 8.10.16	N.O.
Stetson 204	Trujillo Letter to Gutman 9.14.16	N.O.
Stetson 205	Trujillo Letter to Gutman 10.11.16	N.O.
Stetson 206	Trujillo Report to the School Reform Commission 10.12.16	N.O.
Stetson 207	Trujillo Letter to Gutman 1.29.18	N.O.
Stetson 208	Antonia Pantoja Charter School - Renewal Charter - 2018	Admitted ⁴⁶
Stetson 209	Eugenio Maria de Hostos Charter School - Renewal Charter - 2018	Admitted
Stetson 210	Antonia Pantoja Charter School - 2015 ACE	Admitted
Stetson 211	Antonia Pantoja Charter School - 2016 ACE	Admitted
Stetson 212	Antonia Pantoja Charter School - Renewal Report - 2013	N.O.
Stetson 213	Antonia Pantoja Charter School - Renewal Report - 2018	N.O.
Stetson 214	Eugenio Maria de Hostos Charter School - 2015 ACE	Admitted
Stetson 215	Eugenio Maria de Hostos Charter School - 2016 ACE	Admitted
Stetson 216	Eugenio Maria de Hostos Charter School - Renewal Report - 2013	N.O.
Stetson 217	Eugenio Maria de Hostos Charter School - Renewal Report - 2018	N.O.
Stetson 218	Chao 060118 email w attachments re Charter Pantoja	Admitted

⁴⁶ Exhibits Stetson 208-211, 214-215 and 218-219 were initially admitted subject to consideration of whether they are relevant and material to any defenses asserted in post-hearing submissions. (See Tr. vol. 16, at 362:20-366:21, 365:21-366:1, 387:8-19.) Upon consideration of those submissions, these exhibits are now admitted as relevant to Olney's argument that the financial dealings among ASPIRA managed schools should be disregarded because the CSO recommended a different outcome for Pantoja and Hostos.

<u>Exhibit</u>	<u>Description</u>	<u>Status</u>
Stetson 219	Chao 060118 email w. attachments re Charter Hostos	Admitted
Stetson 220	Excerpt - Philadelphia Charter School Renewal Evaluations 2017-2018	N.O.
Stetson 221	James Parsons Resume	N.O.
Stetson 222	Richard Allen Preparatory C.S. - Release and Settlement Agreement - fully executed	Excluded ⁴⁷
Stetson 223	Richard Allen Preparatory Charter School - 2015 ACE	Excluded
Stetson 224	Richard Allen Preparatory Charter School - 2015 Renewal Report	Excluded
Stetson 225	Richard Allen Preparatory Charter School - 2017 ACE	Excluded
Stetson 226	Richard Allen Preparatory Charter School - 2017 Notice of Deficiency	Excluded
Stetson 227	Richard Allen Preparatory Charter School - 2017 Supplemental Renewal Report	Excluded
Stetson 228	ASPIRA charter provider on thin ice, Philly School District says - WHYY	Excluded ⁴⁸
Stetson 229	Attendance Summary – 2014-2017	N.O.
Stetson 230	RFP 286- Renaissance Schools Year II - FINAL 11-16-10	Admitted
Stetson 231	SPI Manual-1	Admitted
Stetson 232	SPI Q&A	Admitted
Stetson 323	Imagine 2014 - Five-Year Strategic Plan	Admitted
Stetson 234	Imagine 2014- A Year 2 Update	Admitted
Stetson 235	Teachers and students call for more resources for growing English Learner population _ The notebook	Excluded
Stetson 236	Pew Report - Getting Into High School in Phila	Admitted
Stetson 237	Steel parents file grievance against SAC charter vote _ Parents United for Public Education	N.O.
Stetson 238	Steel parents win decisive vote to keep school public _ Parents United for Public Education	N.O.

⁴⁷ Exhibits Stetson 222-227 were excluded as irrelevant and prejudicial. (*See* Tr. vol. 16, at 367:10-368:1. 387:20-388:2.)

⁴⁸ Exhibit Stetson 228 was excluded as hearsay. (*See* Tr. vol. 16, at 369:18-22, 289:12-390:1.)

<u>Exhibit</u>	<u>Description</u>	<u>Status</u>
Stetson 239	Renaissance Schools Advisory Board Final Report 2009	Admitted
Stetson 240	SRC Minutes 6.21.18 Charter Schools	N.O.
Stetson 241	Comparison of Domain Questions 14-15 & 15-16	N.O.
Stetson 242	Docket 289 MD 2017 - Antonia Pantoja Charter School, et al. v. Commonwealth	Excluded ⁴⁹
Stetson 243	Docket - Antonia Pantoja Charter School, et al. v. School Dist	Excluded
Stetson 244	Auditor General's Report - School District of Phila 2016	Excluded ⁵⁰
Stetson 245	Auditor General's Report - SDP's Oversight of Charters 2016	N.O.
Stetson 246	Can we trust the Philadelphia District's yardstick for school quality - WHYY	N.O.
Stetson 247	Phila. District Suspends School-Rating System - Education Week	N.O.
Stetson 248	Propel Charter School Federal Agreement	N.O.
Stetson 249	Appendix A to Propel Official Statement	N.O.
Stetson 250	Yeslli Ann Hernandez Profile	N.O.
Stetson 251	Schuh Comparison of Aspira Stetson CS to Richard Allen Prep CS and Philadelphia District Schools	Excluded ⁵¹
Stetson 252	Schuh Source Documents - Comparison of Aspira Stetson CS to Richard Allen Prep CS	N.O.
Stetson 253	PDE_SDP Source Documents – Stetson-27 - Feeder Schools for Stetson	N.O.
Stetson 254	PDE/SDP Source Documents – Stetson-48 - Peer School Demographics for Stetson	N.O.
Stetson 255	SDP School Performance Index PowerPoint 2011	Admitted
Stetson 256	The Widening Academic Achievement Gap Between the Rich and the Poor - Reardon	N.O.
Stetson 257	SDP SPR SY1718 Peer Group Generation	Admitted

⁴⁹ Exhibits Stetson 242-243 were excluded as irrelevant and immaterial. (*See* Tr. vol. 16, at 369:23-370:4, 388:3-7.) *See also* footnote 15 above.

⁵⁰ Exhibit Stetson 244 was excluded as hearsay. (*See* Tr. vol. 16, at 271:6-272:4, 388:8-12.)

⁵¹ Exhibit Stetson 251 was excluded as unauthenticated, hearsay and irrelevant. (*See* Tr. vol. 15, at 275:6-282:23.)

<u>Exhibit</u>	<u>Description</u>	<u>Status</u>
Stetson 258	Testimony from Non-Renewal Hearing – Eastern University Academy Charter School	Partial; Qualified ⁵²
Stetson 259	PNC Transaction 2011 - 5,004,005.47 Term Loan Documents	Admitted
Stetson 260	PNC Transaction 2011 - 629,554.66 Term Loan Documents	Admitted
Stetson 261	PNC Transaction 2011 - 50,000 Loan to Eugenio Documents	Admitted
Stetson 262	PNC Transaction 2011 - 50,000 Loan to Stetson Documents	Admitted
Stetson 263	PNC Transaction 2011 - Collateral Documents	Admitted
Stetson 264	PNC Transaction 2011 - Borrowers Documents	Admitted
Stetson 265	SDP Renaissance Policy 407	Excluded ⁵³
Stetson 266	Provident Transaction - 4-22-2016	Admitted
Stetson 267	Samms Letter in re ASPIRA, Olney, Stetson 3.25.19	Excluded ⁵⁴
Stetson 268	Provident Opinion Letter from Borrower's Counsel - 4.22.16	Admitted
Stetson 269	Glenda Marrero's Resume	Admitted
Stetson 270	Underlying Data for MAP Exhibits	Admitted
Stetson 271	2016-17 Grade 7 Math PSSA Student Results	Admitted
Stetson 272	2019-03-26 Subpoena to Stetson with Responsive Documents	Admitted
Stetson 273	Krain Notes	Admitted
Stetson 274	PDE RTK Request 3.14.19	Excluded ⁵⁵

⁵² Pages 44:10-47:17, 49:24-50:22, 56:21-58:7, 70:19-71:18, 92:14-18, 93:2-23, 97:2-98:12, 101:1-10, 105:22-106:9, 115:16-116:17, 124:20-125:24, 133:5-24, 134:24-135:7, 136:21-138:4 and 154:5-15 of Exhibit Stetson 258 were admitted as an opposing party's statements pursuant to Pa. R. Evid. 803(25), subject to consideration of whether they are relevant and material to any defenses asserted in post-hearing submissions. Upon consideration of those submissions, these pages are now admitted for any light they might shed on the grounds for nonrenewal asserted at the hearing. All other portions of this exhibit were withdrawn by the Reilly Email, so those portions are not admitted. (*See* Ex. HO[S] 109.)

⁵³ Exhibit Stetson 265 was not unauthenticated. (*See* Tr. vol. 16, at 388:13-389:2.)

⁵⁴ Exhibit Stetson 267 was objected to as hearsay. A ruling on that objection was deferred pending consideration of further argument in post-hearing submissions. (*See* Tr. vol. 15, at 286:6-288:9.) After considering those submissions, the hearsay objection is sustained for the reasons explained in Section III.H.5 of the accompanying Report.

<u>Exhibit</u>	<u>Description</u>	<u>Status</u>
Stetson 275	PDE RTK Extension 3.21.19	Excluded
Stetson 276	PDE RTK Final Response 4.11.19	Excluded
Stetson 277	Minority-Led Charter Schools Briefing 3.29.19	Admitted ⁵⁶

H. Hearing Officer Exhibits in the Olney Matter

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HO[O] 19	2019-01-30 Olney Exhibit and Witness List.pdf
HO[O] 20	2019-01-31 Leinhauser Email to Garcia.pdf

⁵⁵ Exhibits Stetson 274-276 were excluded as irrelevant. (*See* Tr. vol. 16, at 375:14-380:9, 389:3-9.)

⁵⁶ Exhibit Stetson 277 was admitted after the hearing was concluded, subject to argument about its relevance, materiality and significance in post-hearing submissions. (*See* Ex. HO[S] 115.) After considering those submissions, it is admitted as relevant and material to the argument that there are inequities in the charter renewal process.

HO[O] 21	2019-01-31 Reply to Leinhauser Email.pdf
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HO[O] 121	2019-06-16 Garcia Email Ruling on Motion to Disqualify
HO[O] 122	2019-06-19 Olney Motion for Reconsideration
HO[O] 123	2019-06-19 Garcia Email Ruling on Motion for Reconsideration
HO[O] 124	2019-06-23 RFM Philadelphia 2016-17
HO[O] 125	2019-06-23 Garcia Demographic Calculations

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HO[S] 111	2019-05-12 Angel Morales Comment (PC 03) - Google Translate
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HO[S] 121	2019-06-11 Stetson Supporting Memorandum
HO[S] 122	2019-06-11 Stetson Motion for Rehearing
HO[S] 123	2019-06-11 Stetson Proposed Order for Motion for Rehearing
HO[S] 124	2019-06-11 Stetson Motion to Disqualify
HO[S] 125	2019-06-11 Stetson Proposed Order for Motion to Disqualify
HO[S] 126	2019-06-12 Garcia Email Ruling on Motion for Rehearing
HO[S] 127	2019-06-16 Garcia Email Ruling on Motion to Disqualify
HO[S] 128	2019-06-19 Stetson Motion for Reconsideration
HO[S] 129	2019-06-19 Garcia Email Ruling on Motion for Reconsideration
HO[S] 130	2019-06-23 RFRM Philadelphia 2016-17
HO[S] 131	2019-06-23 Garcia Demographic Calculations

J. Public Comments in the Olney Matter⁵⁷

<u>Exhibit</u>	<u>Name</u>	<u>Role</u>
PC[O] 1	Lynda Rubin	Community Member (APPS)
PC[O] 2	Lisa Haver	Community Member (APPS)
PC[O] 3	Deborah Grill	Community Member (APPS)
PC[O] 4	Karel Kilimnik (First Comment)	Community Member (APPS)
PC[O] 5	Diane Payne	Community Member
PC[O] 6	Karel Kilimnik (Second Comment)	Community Member (APPS)
PC[O] 7	Adelaida Morales	Parent

⁵⁷ Because public comments were solicited at the same time for Olney and Stetson, some of these comments related to both schools. (See Ex. PC[O] 1 and PC[S] 20; Ex. PC[O] 2 and PC[S] 21; Ex. PC[O] 3 and PC[S] 29; Ex. PC[O] 4 and PC[S] 33; Ex. PC[O] 5 and PC[S] 34; Ex. PC[O] 6 and PC[S] 37; Ex. PC[O] 7 and PC[S] 53.)

PC[O] 8	Kathryn M. McKinley	Special Education Director
PC[O] 9	Bahiyya Burke	Student
PC[O] 10	Danelle Ortiz	Student
PC[O] 11	Radelyn Deleon Camito	Student
PC[O] 12	Shanya Soto	Student
PC[O] 13	Justin Davis	Student
PC[O] 14	Dandre	Student
PC[O] 15	Charles Littes	Student
PC[O] 16	Josue	Student
PC[O] 17	Elvin Compos	Student
PC[O] 18	Destiny Carmona	Student
PC[O] 19	Ernest Wiley	Student
PC[O] 20	Valery Rodriguez	Student
PC[O] 21	Ramon Bellard-Gomez	Student
PC[O] 22	Hector Figuerra	Student
PC[O] 23	Serenity White	Student
PC[O] 24	Heizel Guevara	Student
PC[O] 25	Shayro Perez	Student
PC[O] 26	Kayshla Martinez	Student
PC[O] 27	Elizabeth Cesarini	ELL Coordinator
PC[O] 28	Yeison Ramirez	Student
PC[O] 29	Drew Podillo	Student
PC[O] 30	Juliany Morales	Student
PC[O] 31	Lovelvn Gonzales	Student
PC[O] 32	Christina Brown	Student
PC[O] 33	Kamioha Labbiter	Student
PC[O] 34	Aaaquil	Student
PC[O] 35	JuhsI Jackson	Student
PC[O] 36	Bryan Vidoso	Student
PC[O] 37	Luis F.	Student
PC[O] 38	Neysha Fernandez	Student
PC[O] 39	Aiondra Rivera	Student
PC[O] 40	Naykalee Rivera	Student
PC[O] 41	Osiris Morales-Vargas	Student
PC[O] 42	Malik Campbell	Student

PC[O] 43	Djybi Thiam	Student
PC[O] 44	Anthony Baerga	Student
PC[O] 45	Samuel Feliciano	Student
PC[O] 46	Hodalys Mendoza	Student
PC[O] 47	Salvador Arroyo	Student
PC[O] 48	Kener Cordon	Student
PC[O] 49	Ross Shane	Student
PC[O] 50	Nathan Gonzalez	Student
PC[O] 51	Josh Rivera	Student
PC[O] 52	Kayla M.	Student
PC[O] 53	Sayde Rodriguez	Student
PC[O] 54	Nasir P.	Student
PC[O] 55	Tanae Stanfield	Student
PC[O] 56	Han Nguyen	Student
PC[O] 57	Prok	Student
PC[O] 58	Anthony Lawrence	Student
PC[O] 59	Tifannie Torres	Student
PC[O] 60	Marquise Harley	Student
PC[O] 61	Justin Ortiz	Student
PC[O] 62	Saul Estevez	Student
PC[O] 63	Genesis Ramirez	Student
PC[O] 64	Davuenksy Alretvs	Student
PC[O] 65	Jaydon Hill	Student
PC[O] 66	Laysha Burgos	Student
PC[O] 67	Anika Colon	Student
PC[O] 68	Taizarrah	Student
PC[O] 69	Tiqzjah Brownlee	Student
PC[O] 70	Devonte Tarrance	Student
PC[O] 71	Trale	Student
PC[O] 72	Jean Anne English	Teacher
PC[O] 72	Elizabeth Wolff	Teacher
PC[O] 73	Jealiz Marie Rosario	Student
PC[O] 74	Chasatie Ramos	Student
PC[O] 75	Darontaye Blake	Student
PC[O] 76	Ariel Cochancela	Student

PC[O] 77	Brian Tav	Student
PC[O] 78	Corey Coston	Student
PC[O] 79	Danelys Acosta	Student
PC[O] 80	Julius Cumba	Student
PC[O] 81	Kevin Aguila	Student
PC[O] 82	Cristian Villareal	Student
PC[O] 83	Myshae Giddings	Student
PC[O] 84	Sylvia Danesa Rivera	Student
PC[O] 85	Tamera King	Student
PC[O] 86	Zaikareah Bruce	Student
PC[O] 87	Shafeeqa Robinson	Student
PC[O] 88	Aminah M Gray	Student
PC[O] 89	Timothy Smith	Student
PC[O] 90	Zakia Long	Student
PC[O] 91	Brandon Fatal	Student
PC[O] 92	Jordy Rodriguez	Student
PC[O] 93	Mendy Obassi	Student
PC[O] 94	Pamela Bosque Lopez	Student
PC[O] 95	Xavier Pedrogo	Student
PC[O] 96	Siani Richardson	Student
PC[O] 97	Cliff Leon	Student
PC[O] 98	Yazmine Seleman	Student
PC[O] 99	Lesliany Valedon	Student
PC[O] 100	Shaquanna Dunston	Student
PC[O] 101	Jean O. Oliveras	Student
PC[O] 102	Lyanni Perez	Student
PC[O] 103	Raygermee Salas	Student
PC[O] 104	Tyesha Jones	Student
PC[O] 105	Jovanni	Student
PC[O] 106	Nayelie DeJesusl	Student
PC[O] 107	Mostafa	Student
PC[O] 108	Eliah	Student
PC[O] 109	Demetrius Torres	Student
PC[O] 110	Joshua Rejnolo	Student
PC[O] 111	Safi Yaking	Student

PC[O] 112	Rashon Yoeang	Student
PC[O] 113	Jorge Colon-Torres	Student
PC[O] 114	Rashed	Student
PC[O] 115	Victoria Moxey	Student
PC[O] 116	Destenie Ramos	Student
PC[O] 117	Evelin Ruiz Garcia	Student
PC[O] 118	Darnell Johnson	Student
PC[O] 119	Daizan Phy	Student
PC[O] 120	Myzeh Ross	Student
PC[O] 121	Melvin Then	Student
PC[O] 122	Yeredith Cruz	Student
PC[O] 123	Dajuan Bowman	Student
PC[O] 124	Daaaina	Student
PC[O] 125	Jeses	Student
PC[O] 126	Mohammad Yassin	Student
PC[O] 127	Haziz	Student
PC[O] 128	Euaria	Student
PC[O] 129	Alexandrina	Student
PC[O] 130	Joseli Torres	Student
PC[O] 131	Jorge	Student
PC[O] 132	Luis Gonzalez	Student
PC[O] 133	Devon Sovann	Student
PC[O] 134	Sovandara Huynh	Student
PC[O] 135	Latyra Perry	Student
PC[O] 136	Latyra Perry [DUP]	Student
PC[O] 137	Luis Gonzalez [DUP]	Student
PC[O] 138	Kanye Gladden	Student
PC[O] 139	Kanye Gladden [DUP]	Student
PC[O] 140	Vanessa Peralta-Eduardo	Student
PC[O] 141	Zion Adams	Student
PC[O] 142	Nafisah Haynes	Student
PC[O] 143	Brian Gillin	Teacher


K. Public Comments in the Stetson Matter

<u>Exhibit</u>	<u>Name</u>	<u>Role</u>
PC[S] 1	Elizabeth Cooper	Teacher
PC[S] 2	Lizzy Diaz	Parent
PC[S] 3	Angel Morales	Parent
PC[S] 4	Lindsey Fick	Counselor
PC[S] 5	Genoveva Ramos	Grandparent
PC[S] 6	Angel Morales (Second Comment)	Grandparent
PC[S] 7	Robin Filut	Teacher
PC[S] 8	Jane Edwards	Teacher
PC[S] 9	Lucas Shayka	Teacher
PC[S] 10	Marypat Coyle	Teacher
PC[S] 11	Rhode Diaz Adames	Outreach Coordinator
PC[S] 12	Thomas Mullin	Principal
PC[S] 13	Dianne Tzouras Stackhouse	Community Member
PC[S] 14	Joanne Esquilin	Community Member
PC[S] 15	George Vafiadis	Community Member
PC[S] 16	Mary Frances Cavallaro	Teacher
PC[S] 17	Beth Cole	Director of Operations
PC[S] 18	Anisha Berrien-Akers	School Nurse
PC[S] 19	Tim Conaway	Teacher
PC[S] 20		Community Member
	Lynda Rubin	(APPS)
PC[S] 21		Community Member
	Lisa Haver	(APPS)
PC[S] 22	Paige Erin Kavanaugh	Teacher
PC[S] 23	Danielle McIntosh	Teacher
PC[S] 24	Margot Vineberg	Teacher
PC[S] 25	Jennifer Portante	Teacher
PC[S] 26	Christopher T. Sutter	Teacher
PC[S] 27	Samantha Alicea-Swindell	Teacher
PC[S] 28	Noelle McMullin	ASPIRA Employee
PC[S] 29		Community Member
	Deborah Grill	(APPS)
PC[S] 30	Glenda H. Marrero	Assistant Principal
PC[S] 31	Panagiotis Giannoumis	Unspecified

PC[S] 32	Lauren Valerio	Teacher
PC[S] 33	Karel Kilimnik	Community Member (APPS)
PC[S] 34	Diane Payne	Community Member
PC[S] 35	Lindsey Polacheck	Teacher
PC[S] 36	Kelly Hirsch	Teacher
PC[S] 37	Karel Kilimnik (Second Comment)	Community Member (APPS)
PC[S] 38	Aubrey Redd	Provider
PC[S] 39	Edwin Desamour	Behavior Specialist
PC[S] 40	Electronic Petition:	
	Athena Levan	Community Member
	Jessica Mendez	Community Member
	Ashley Rosario	Community Member
	Chris Lelpert	Community Member
	Jennifer Santiago	Community Member
	Angela Orth	Community Member
	Mary Frances Cavallaro	Community Member
	Dave Talbot	Community Member
	Jane Edwards	Community Member
	Keith Sabo	Community Member
	Robin Filut	Community Member
	Alysha McGovern	Community Member
	Ms. Dotvil	Community Member
	Lynn Guiles	Community Member
	Barbara Wallace	Community Member
	Lindsey Fick	Community Member
	Alyssla Zimmaro	Community Member
	NaQuisha Hartwell-Bradford	Community Member
	Eugenia Giannoumis	Community Member
	Lucas Shayka	Community Member
	Rhode Diaz Adames	Community Member
	Kathryn Baldwin	Community Member
	Erin Seitz	Community Member
	Sofra Peguero	Community Member
	Joanne Esquilin	Community Member

	Crystal Pritchett	Community Member
	Erin Seitz	Community Member
	April Grimes	Community Member
	Maureen Ann Burke	Community Member
	Peter Daniel Coyle	Community Member
	Elizabeth Cooper	Community Member
	Lloyd Hicks	Community Member
	Kimberly A. Christidhis	Community Member
	Monique Williams	Community Member
	Cesar Rios	Community Member
	Mrs. Taylor	Community Member
	David Anthony	Community Member
	Bill Rowe	Community Member
	Raimundo Rivera	Community Member
	Jesslca Martinez	Community Member
	George	Community Member
	Anisha Berrien-Akers	Community Member
	Ken Tomczuk	Community Member
	Lynn Gulles	Community Member
	Tim Conaway	Community Member
	Katherine Levins	Community Member
	Annamary Rivera	Community Member
	Noelle McMullin	Community Member
	Noelle McMullin	Community Member
	Danielle McIntosh	Community Member
	Margot Vineberg	Community Member
	Jennifer Portante	Community Member
	Pamela Cassel	Community Member
	Lauren Valerio	Community Member
	Jeffety Pugh	Community Member
	Lindsey Polacheck	Community Member
PC[S] 41	Greg Mangels	Services Coordinator
PC[S] 42	Sofia Peguero	Teacher
PC[S] 43	Jen Jen	Unspecified
PC[S] 44	Jen Jen (Second Comment)	Unspecified

PC[S] 45	Emily S. Hartz	School Psychologist
PC[S] 46	Jeannette Rodriguez	Administrative Assistant
PC[S] 47	Crystal Pritchett	Community Member
PC[S] 48	Myra Rivera	Secretary
PC[S] 49	Nadya Rivera	Office Clerk
PC[S] 50	Christopher Devers	Teacher
PC[S] 51	Demetra Vafiadis	Unspecified
PC[S] 52	Erin K. Kelly	Teacher
PC[S] 53	Adelaida Morales	Parent
PC[S] 54	Dalia Burgos	Parent
PC[S] 55	Kelsey Schwarzenbach	Teacher
PC[S] 56	Rubena Papakirk	Community Member
PC[S] 57	Erin K. Kelly (Second Comment)	Teacher
PC[S] 58	Kathryn M. McKinley	Special Education Director



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