

July 6, 2016

RESOLUTION

Re: Proposed Charter School Renewal - Gillingham Charter School

WHEREAS, pursuant to the Charter School Law ("CSL"), 24 Pa. C.S.A. § 17-1701-A, et seq., the Board of Education of the School District of Pottsville ("School District") granted a charter to GILLINGHAM CHARTER SCHOOL ("Gillingham" or "Charter School") to operate a charter school from July 1, 2011 until June 30, 2016; and

WHEREAS, in 2015, the Charter School applied for renewal of the Charter for an additional five-year term; and

WHEREAS, by Resolution dated December 2, 2015, the School District Board of School Directors notified Gillingham Charter School ("Gillingham") that the Charter School's Charter not be renewed; and

WHEREAS, in compliance with Section 1729-A of the Charter School Law, the Board of Directors of the Pottsville Area School District issued a notice of non-renewal by Resolution dated December 2, 2015 setting forth the reasons why the Charter School's Charter should not be renewed, scheduling a hearing in this matter and authorizing the appointment of a hearing officer to conduct a hearing; and

WHEREAS, a hearing officer, Marc Fisher, was appointed and held public hearings on April 18, 2016; April 19, 2016; April 20, 2016; April 21, 2016; April 25, 2016; April 26, 2016; May 3, 2016; May 4, 2016, May 12, 2016, May 19, 2016; May 23, 2016, during which testimony and exhibits were received regarding the recommended non-renewal; and

WHEREAS, a 30-day public comment period was provided following the conclusion of the hearings; And

WHEREAS, pursuant to the Charter School Law, the Charter School has been permitted to remain in operation beyond July 6, 2016, pending the outcome of those proceedings; and

WHEREAS, on June 28, 2016 the hearing officer submitted a report to the School District's administration, including Findings of Fact, Conclusions of Law and a proposed adjudication recommending revocation and non-renewal of the Charter; and

WHEREAS, the School District has reviewed the Charter School's request for a renewal, all of the testimony and exhibits admitted during the hearing, the hearing officer's report, including its findings of fact and conclusions of law, the submissions by all interested counsel, and all public comments received; and

WHEREAS, this matter is now ripe for decision; now be it


RESOLVED, That the Charter School's request for renewal of its Charter is DENIED; and be it

FURTHER RESOLVED, That the School District adopts the attached hearing officer's report, its Findings of Fact and Conclusions of Law, as the reasons for this decision; and be it

FURTHER RESOLVED, That in the event the Charter School timely appeals this decision to the State Charter School Appeal Board ("Appeal Board"), pursuant to the requirement contained in Section 1729-A (f) of the Charter School Law, the Charter shall remain in effect and the Charter School shall be permitted to remain open pending the conclusion of its appeal before the Appeal Board. In the event that the Charter School does not appeal this decision to the Appeal Board, the Charter School shall cease all operations pursuant to a dissolution plan and timetable established by the Pottsville Area School District. Said plan shall be presented to the Pottsville Area School District Board of School Directors within 45 days of the date of this Order.

July 6, 2016

ATTEST:



Steven Curran, Secretary



John Boran, President of the Board of School Directors

**BEFORE THE BOARD OF SCHOOL DIRECTORS
OF THE POTTSVILLE AREA SCHOOL DISTRICT**

In Re: Gillingham Charter School

REPORT AND RECOMMENDATION OF THE HEARING OFFICER

By Resolution dated December 2, 2015, the Board of School Directors ("Board") of the Pottsville Area School District ("School District") or ("PASD") notified Gillingham Charter School ("Gillingham") or ("GCS") of its intent not to renew its previously-issued charter.¹ (SD 2). The School District subsequently appointed the undersigned to serve as a Hearing Officer to conduct public hearings concerning the nonrenewal and to prepare a proposed adjudication containing findings of fact and conclusions of law for consideration by the Board. (HO 1). Advertised public hearings were conducted by the Hearing Officer on April 18, 2016, April 19, 2016, April 20, 2016, April 21, 2016, April 25, 2016, April 26, 2016, April 27, 2016, May 3, 2016, May 4, 2016, May 12, 2016, May 19, 2016 and May 23, 2016.² (HO 4, HO 5, and HO 6). Following the conclusion of the last hearing, the public was given thirty (30) days to provide the Board with any comments by submitting them directly to the Hearing Officer. (HO 9).

Based upon the record developed at the hearings, including the testimony, other evidence and the public comments received, as well as the arguments of counsel, the Hearing Officer submits the following:

¹ School District Exhibits are identified as SD. Gillingham Exhibits are identified as GCS. Hearing Officer Exhibits are identified as HO.

² The Notes of Testimony began on April 18, 2016 at Page 1 and continue sequentially through May 19, 2016. The Notes of Testimony of May 23, 2016 then begin again at page 1. Any citation to testimony from that date will note both that day and its page number.

A. PROPOSED FINDINGS OF FACT

1. Gillingham is a Pennsylvania non-profit corporation with a place of business at 915 Howard Avenue, Pottsville, PA. (N.T. 1550).
2. In 2009, Gillingham submitted a charter application to the School District. (N.T. 1041, GCS 1).
3. That application was denied by the School District. (N.T. 452, 1042).
4. On June 1, 2010, Gillingham submitted a revised charter application to the School District. (N.T. 1041-1043, GCS 1).
5. On July 21, 2010, the Board voted to deny the revised charter application. (N.T. 1108-1109).
6. By Order dated June 15, 2011, the State Charter School Appeal Board granted the appeal of Gillingham and directed the School District to issue a charter to Gillingham. (N.T. 1108-1109, GCS 2).
7. The School District then issued a charter to Gillingham for a term of five (5) years beginning on July 1, 2011 and ending on June 30, 2016. (N.T. 958, GCS 2).
8. Gillingham opened for Grades K-9 with approximately 175 students in the 2011/2012 school year. (N.T. 1170, 1172).
9. Each school year thereafter, Gillingham added an additional grade, so that by the 2014/2015 school year, it enrolled students from K-12. (N.T. 1170).
10. Gillingham currently serves approximately 240 students, 77 of whom reside within the School District. (N.T. 1171, 2172).

11. Gillingham submitted a timely application to the School District seeking to renew its charter. (N.T. 6-7).

12. The Administration of the School District reviewed the application, and the Board of Directors timely issued its Resolution of Non-Renewal. (N.T. 7).

13. As part of its investigation into whether the charter should be renewed, the School District reviewed the academic performance of Gillingham students, financial issues related to Gillingham, special education issues and other operations of Gillingham. (N.T. 1079).

14. That investigation included, but was not limited to a review of the special education records of students who attended Gillingham but returned to the School District, an on-site visit of Gillingham, a review of records provided by Gillingham, answers provided by Gillingham to questions submitted by the School District, a review of information obtainable from public websites including the Pennsylvania Department of Education ("PDE"), information already in its files from Gillingham, and records received from Gillingham pursuant to Right-to-Know-Law requests. (N.T. 108-109, 368-369, 624, 964).

15. As part of its investigation, the School District also sought to observe a special education classroom during its on-site visit which was denied by Gillingham, and also sought access to special education records of students then attending Gillingham which was likewise refused resulting in litigation being instituted by the School District against Gillingham in the Court of Common Pleas of Schuylkill County at Case No.: S-2089-2015. (N.T. 368, 1081-1082, SD 29).

16. The Complaint filed by the School District sought an order permitting the School District, either directly or through an authorized representative, to access the educational records of its special education students attending Gillingham (SD 29).

17. Simultaneous to the filing of the Complaint, the School District moved for injunctive relief which would compel Gillingham to provide access to the School District's authorized representative, Andrew M. Klein, so that a comprehensive review could occur of Gillingham's special education records. (SD 30).

18. Ultimately, while the litigation was pending, on December 2, 2015, the Board adopted a resolution concluding that there were fifteen (15) separate grounds for nonrenewal of the charter, and establishing a public hearing date subject to rescheduling at which time the School District would present evidence in support of the grounds for nonrenewal of the charter and Gillingham would be given an opportunity to present evidence why the Charter should (not) be renewed. (SD 2).

19. The stated causes for nonrenewal are as follows:

a. FOR THE 2011-12 SCHOOL YEAR, THE CHARTER SCHOOL'S PSSA PROFICIENCY SCORES HAVE BEEN CONSISTENTLY LOWER THAN THE STATE TARGETS AND THE SCHOOL DISTRICT'S SCORES.

b. FOR THE 2012-13 AND 2013-14 SCHOOL YEARS, THE CHARTER SCHOOL'S PSSA PROFICIENCY SCORES AND KEYSTONE PROFICIENCY SCORES HAVE BEEN CONSISTENTLY LOWER THAN THE STATE TARGETS AND THE SCHOOL DISTRICT'S SCORES.

c. FOR THE 2014-15 SCHOOL YEAR, THE CHARTER SCHOOL'S GROWTH RATINGS IN THE AREAS OF PSSA READING, PSSA MATH, KEYSTONE ALGEBRA ONE AND KEYSTONE LITERATURE DID NOT MEET THE STANDARD FOR PENNSYLVANIA ACADEMIC GROWTH.

d. FOR THE 2014-15 SCHOOL YEAR, THE CHARTER SCHOOL'S ACHIEVEMENT LEVELS FOR THE PERCENTAGE OF

STUDENTS WHO ARE PROFICIENT AND ADVANCED WAS BELOW THE SCHOOL DISTRICT'S SCORES; AS WELL AS THE STATE SCORES.

e. THE CHARTER SCHOOL'S PERFORMANCE PROFILE ACADEMIC SCORE ("SPP") ISSUED BY PDE WAS 67.3 OUT OF 107 FOR THE 2012-13 SCHOOL YEAR, 60.9 OUT OF 107 FOR THE 2013-14 SCHOOL YEAR AND 48.4 OUT OF 107 FOR THE 2014-15 SCHOOL YEAR. THE CHARTER SCHOOL'S SPP SCORES ARE BELOW THE SCHOOL DISTRICT'S AVERAGE SPP SCORES FOR EACH RESPECTIVE YEAR. THE STATE'S REQUIRED SATISFACTORY SCORE OF 70 HAS NOT BEEN MET BY THE CHARTER SCHOOL IN ANY OF THE REPORTING YEARS.

f. THE CHARTER SCHOOL FAILED TO MEET THE 100% HIGHLY QUALIFIED TEACHER ("HQT") REQUIREMENT DURING THE TERM OF THE CHARTER, AS REQUIRED BY THE NO CHILD LEFT BEHIND ACT AS REPORTED IN THE SCHOOL REPORT CARDS PREPARED BY PDE. IN THE 2012-2013 SCHOOL YEAR, ONLY 85 PERCENT OF THE CORE ACADEMIC CLASSES TAUGHT AT THE CHARTER SCHOOL WERE TAUGHT BY HIGHLY QUALIFIED TEACHERS. IN THE 2013-2014 SCHOOL YEAR, ONLY 74% OF THE CORE ACADEMIC CLASSES TAUGHT AT THE CHARTER SCHOOL WERE TAUGHT BY HIGHLY QUALIFIED TEACHERS.

g. THE CHARTER SCHOOL FAILED TO MEET ITS LEGAL OBLIGATIONS TO SPECIAL NEEDS STUDENTS APPLICABLE UNDER FEDERAL AND STATE LAW INCLUDING, BUT WITHOUT LIMITATION, THE IDEA, SECTION 504 OF THE REHABILITATION ACT OF 1973 AND CHAPTER 711 OF THE STATE BOARD OF EDUCATION REGULATIONS IN THAT THE CHARTER SCHOOL HAS FAILED TO PROVIDE SERVICES AND/OR DOCUMENT THE SERVICES AS REQUIRED BY LAW.

h. THE CHARTER SCHOOL HAS FAILED TO COMPLY WITH ITS REPRESENTATION TO PARENTS AND STUDENTS AND GUIDANCE ISSUED BY THE PENNSYLVANIA DEPARTMENT OF EDUCATION IN THAT THE CHARTER SCHOOL HAS FAILED TO TIMELY INFORM THE SCHOOL DISTRICT OF RESIDENCE WHEN A STUDENT HAS ACCRUED THREE OR MORE DAYS OF UNEXCUSED ABSENCES.

i. THE CHARTER SCHOOL HAS FAILED TO COMPLY WITH SECTION 504 OF THE REHABILITATION ACT OF 1973, THE PENNSYLVANIA HUMAN RELATIONS ACT, 24 P.S. § 17-1723-A(B)(1), AND /OR GUIDANCE ISSUED BY THE PENNSYLVANIA DEPARTMENT

OF EDUCATION BY DISENROLLING STUDENTS WHO ARE HOSPITALIZED AND/OR PLACED IN INPATIENT REHABILITATIVE FACILITIES.

j. THE CHARTER SCHOOL'S AUDITOR, FOUND AFTER COMPLETING ITS FY 2014 AUDIT, THAT THE CHARTER SCHOOL DID NOT OBTAIN REQUIRED CHILD ABUSE CLEARANCES, FBI BACKGROUND CHECKS AND CRIMINAL HISTORY CHECKS.

k. THE CHARTER SCHOOL'S AUDITOR FOUND, AFTER COMPLETING ITS FY 2014 AUDIT, THAT ALL PERSONNEL FILES DID NOT CONTAIN A COMPLETED I-9 EMPLOYMENT ELIGIBILITY VERIFICATION.

l. THE CHARTER SCHOOL LACKS PROPER INTERNAL FISCAL CONTROLS, INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING EXAMPLES; PAYMENT OF SALES TAX, PURCHASING OF FRESH FLOWERS, AND/OR CASH PURCHASES AT YARD SALES FOR WHICH MANAGEMENT CANNOT PROVIDE ADEQUATE DOCUMENTATION.

m. THE CHARTER SCHOOL HAS FAILED TO MEET GENERALLY ACCEPTED STANDARDS OF FISCAL MANAGEMENT AND/OR AUDIT REQUIREMENTS IN THAT THE CHARTER SCHOOL, THROUGHOUT THE TERMS OF ITS CHARTER, HAS FAILED TO MAINTAIN ACCURATE PROOF OF RESIDENCY RECORDS, BILLED THE SCHOOL DISTRICT FOR STUDENTS WHO DO NOT RESIDE IN THE SCHOOL DISTRICT, BILLED FOR STUDENTS WHO ATTEND THE SCHOOL DISTRICT, INCORRECTLY NOTED WITHDRAWAL DATES, INCORRECTLY NOTED START ENROLLMENT DATES, INCORRECTLY CLASSIFIED STUDENTS AS REGULAR EDUCATION AND/OR SPECIAL EDUCATION AND/OR SUPPLIED INCOMPLETE ENROLLMENT FORMS.

n. THE CHARTER SCHOOL, THROUGHOUT THE TERMS OF ITS CHARTER, HAS FAILED TO COMPLY WITH SECTION 1724-A OF THE CHARTER SCHOOL LAW IN THAT EVERY EMPLOYEE OF THE CHARTER SCHOOL HAS NOT BEEN PROVIDED WITH THE SAME HEALTH CARE BENEFITS AS THE EMPLOYEE WOULD BE PROVIDED IF THE EMPLOYEE WERE AN EMPLOYEE OF THE SCHOOL DISTRICT.

o. THE CHARTER SCHOOL, THROUGHOUT THE TERM OF ITS CHARTER, FAILED TO COMPLY WITH THE ETHICS ACT IN THAT STATEMENTS OF FINANCIAL INTEREST WERE NOT COMPLETED AS REQUIRED BY LAW.

(SD 2).

20. Ultimately, on January 12, 2016, the Court of Common Pleas of Schuylkill County ordered Gillingham to provide the School District with the identity of parent/guardians of children attending its school who had been identified as entitled to receive or were receiving special education and/or Section 504 plan services/accommodations, and that the parties were to jointly construct a letter to each of those parents/guardians asking whether they would consent to a review of their student's records by an independent special education expert to determine if the plans of the student's (IEP/504) met pertinent legal requirements and if the needs and goals of the student's plans were being met. (SD 31).

21. A number of current and former students testified and submitted written comments concerning their academic experiences at Gillingham. (N.T. 1796-1858, 2276-2280).

22. Likewise, parents of both current and former students testified and submitted written comments concerning the academic experiences of their children while at Gillingham. (N.T. 1294-1319, 1868-1878, 2100-2124, 2161-2170, 2208-2223, 2285-2300, HO 9).

23. In addition, other individuals also submitted written comments concerning the decision to renew or not renew the charter. (HO9).

24. While that testimony and the written comments were interesting, none of it was based on any empirical data or was aligned to any of the state requirements for student academic performance or was based on any performance standard set forth in the written charter.

25. Accordingly, none of the testimony of the students or their parents, or any of the written comments submitted by the parents is given any weight.

FOR THE 2011-12 SCHOOL YEAR, THE CHARTER SCHOOL'S PSSA PROFICIENCY SCORES HAVE BEEN CONSISTENTLY LOWER THAN THE STATE TARGETS AND THE SCHOOL DISTRICT'S SCORES.

26. In its revised charter application, Gillingham has a stated goal to "Demonstrate student achievement and school success by meeting AYP targets." (GCS 1).

27. Within that goal was an objective that "on average, the test scores will increase over the term of the charter sufficient to earn AYP." (GCS 1).

28. For the 2011/2012 school year, the No Child Left Behind Act ("NCLB") required that all public schools, including charter schools, receiving federal funding to administer a statewide standardized test to all students to ensure that students and schools make Adequate Yearly Progress ("AYP"). (N.T. 562-566, 572-573, 1164, 1894-1895).

29. For that school year, Pennsylvania utilized the PSSA (Grades 3-8 and 11) as the test to ensure student and school performance, and established certain benchmarks to gauge whether students were scoring at a proficient or above level, and each public school received a report card displaying, among other things, a report of its academic performance. (N.T. 562-566).

30. For that school year, to meet the performance measure required for AYP, schools and certain measureable subgroups (as identified in the NCLB) in schools were required to have at least 78% of tested students achieving a proficient score or higher

on the mathematics assessment and 81% of tested students achieving a proficient score or higher on the reading assessment. (N.T. 562-566, 575-573).

31. For that school year, only 33% of Gillingham students were deemed proficient or higher in the mathematics assessment, while 36% of its students scored below basic. (SD 63).

32. For that school year, only 52% of Gillingham students were deemed proficient or higher in the reading assessment, while 28% of its students scored below basic. (SD 63).

33. For that school year, 76% of the School District students were deemed proficient or higher in the mathematics assessment, while 10% of its students scored below basic. (SD 62).

34. For that school year, 71% of the School District students were deemed proficient or higher in the reading assessment, while 13% of its students scored below basic. (SD 62).

35. For the 2011/2012 school year, Gillingham failed to make AYP. (N.T. 1425, SD 63).

36. Gillingham failed to meet the goal set forth in its charter of demonstrating student achievement and school success by meeting AYP targets.

37. Gillingham failed to reach the stated objective set forth in its charter of having, on average, its test scores increasing over the term of the charter sufficient to earn AYP.

38. For the 2011/2012 school year, Gillingham failed to meet the Pennsylvania student performance requirements because the percentage of its students

scoring proficient or better in both assessments were far below the applicable State proficiency targets and its proficiency rates were far below the School District's schools. (N.T. 1967-1969, SD 62, SD 63).

FOR THE 2012-13 AND 2013-14 SCHOOL YEARS, THE CHARTER SCHOOL'S PSSA PROFICIENCY SCORES AND KEYSTONE PROFICIENCY SCORES HAVE BEEN CONSISTENTLY LOWER THAN THE STATE TARGETS AND THE SCHOOL DISTRICT'S SCORES.

39. In the 2012/2013 school year, instead of receiving a district report card, public schools in Pennsylvania, including charter schools, now received a new document entitled Federal Required Reporting Measures ("FRRM") as a measurement for promoting state, school district and student accountability. (N.T. 577-580, 1895-1986).

40. The PSSA remained as the test to ensure student and school performance for Grades 3-8, but the Keystone Exams replaced the PSSA as the assessment tool for Grade 11. (N.T. 577-580).

41. Unlike the PSSA which is an assessment for a specific grade level, the Keystone Exam is administered following the completion of a course, whenever that course is taken, but the test results are not counted until Grade 11. (N.T. 577-580, 1926-1928).

42. The FRRM contains an Accountability Report that includes student results from the PSSA and Keystone Exams listed by disaggregated group and performance level, and the school district's performance compared with goals set for accountability requirements. (N.T. 577-580).

43. The FRRM also contains an Assessment Report which shows a two (2) year comparison of academic performance for all students. (N.T. 577-582).

44. For the 2012/2013 school year, the established goal was for 73% of all students to score proficient and above in the mathematics assessment and 70% of all students to score proficient and above in the reading assessment. (N.T. 582-583).

45. For that school year, only 42% of Gillingham students were deemed proficient or higher in the mathematics assessment, while 33% of its students scored below basic. (SD 58).

46. For that school year, only 51% of Gillingham students were deemed proficient or higher in the reading assessment, while 28% of its students scored below basic. (SD 58).

47. For that school year, 72% of the School District students were deemed proficient or higher in the mathematics assessment, while 10% of its students scored below basic. (SD 59).

48. For that school year, 69% of the School District students were deemed proficient or higher in the reading assessment, while 14% of its students scored below basic. (SD 59).

49. For the 2012/2013 school year, Gillingham failed to meet the Pennsylvania student performance requirements because the percentage of its students scoring proficient or better in both assessments was far below the state goal and its proficiency rates was far below the performance of the School District's schools. (N.T. 1969-1972, SD 58, SD 59).

50. For the 2013/2014 school year, each public school, including charter schools, continued to receive a FRRM which included an Accountability Report and an Assessment Report. (SD 60, SD 61).

51. However, beginning that school year, Pennsylvania no longer established a uniform state goal of proficiency for all students, but established a unique goal for the school district based on its baseline performance from the prior school year. (SD 60, SD 61).

52. The PSSA continued as the assessment tool for Grades 3-8, and the Keystone Exams remained as the assessment tool for Grade 11. (SD 60, SD 61).

53. The Mathematics assessment was renamed Mathematics/Algebra I and the Reading Assessment was renamed Reading/Literature. (SD 60, SD 61).

54. For that school year, the established goal for Gillingham was for 47% of all students to score proficient or above in Mathematics/Algebra I and 55% of all students to score proficient or above in Reading/Literature. (SD 60).

55. For that school year, only 39% of Gillingham students were deemed proficient or higher in the Mathematics/Algebra I assessment, while 32% scored below basic. (SD 60).

56. For that school year, 58% of Gillingham students were deemed proficient or higher in Reading/Literature assessment, while 24% scored below basic. (SD 60).

57. For that school year, the established goal for the School District was for 71% of all students to score proficient or above in Mathematics/Algebra I and 69% of all students to score proficient or above in Reading/Literature. (SD 61).

58. For that school year, 72% of School District students were deemed proficient or higher in the Mathematics/Algebra I assessment, while 13% scored below basic. (SD 61).

59. For that school year, 70% of School District students were deemed proficient or higher in the Reading/Literature assessment, while 14% scored below basic. (SD 61).

60. For the 2013/2014 school year, Gillingham failed to meet the Pennsylvania student requirements because the percentage of its students scoring proficient or better in the Mathematics/Algebra I assessment was far below the state goal and its proficiency rates in both assessments were far below the School District, which did meet its own, higher target goal rates. (N.T. 1969-1972, SD 60, SD 61).

FOR THE 2014-15 SCHOOL YEAR, THE CHARTER SCHOOL'S GROWTH RATINGS IN THE AREAS OF PSSA READING, PSSA MATH, KEYSTONE ALGEBRA ONE AND KEYSTONE LITERATURE DID NOT MEET THE STANDARD FOR PENNSYLVANIA ACADEMIC GROWTH.

61. Once AYP was no longer in use after the 2011/2012 school year, Pennsylvania adopted another method of measuring performance known as the School Performance Profile ("SPP"). (N.T. 597-599, 1895-1896).

62. Within the SPP, PDE also calculates Indicators of Academic Growth, or PVAAS (Pennsylvania Value-Added Assessment System). (N.T. 604, 1902-1904).

63. PVAAS is a statistical analysis to show growth data to measure a district or school's impact on the academic progress rate of students from year-to-year.

(N.T. 604, 1902-1904).

64. PVAAS is available in the grades and subjects/courses assessed in Pennsylvania's statewide assessment system including reporting for Mathematics and English/Language Arts ("ELA") (grades 4-8), science (grades 4 and 8) and the Keystone (Algebra I, Literature and Biology). (N.T. 616).

65. The PVAAS calculation establishes an Average Growth Index ("AGI") to determine whether students met or did not meet the standard for Pennsylvania Academic Growth. (N.T. 604, 615-616, 1902-1904, 1938-1940).

66. Where the AGI = 0, on average, students met the standard for Pennsylvania Academic Growth. (SD 73).

67. The farther the AGI is above 0.0, the more evidence there is that, on average, students exceeded the standard for Pennsylvania Academic Growth. (SD 73).

68. The farther the AGI is below 0.0, the more evidence there is that, on average, students did not meet the standard for Pennsylvania Academic Growth. (SD 73).

69. For the 2014/2015 school year, Gillingham had an AGI of -0.93 in Keystone Literature. (SD 73).

70. For the 2014/2015 school year, Gillingham had an average AGI of -1.92 in Keystone Algebra 1. (SD 74).

71. For the 2014/2015 school year, Gillingham had an AGI of -1.51 in PSSA Reading/ELA. (SD 75).

72. For the 2014/2015 school year, Gillingham had an AGI of -2.11 in PSSA Math. (SD 76).

73. For the 2014/2015 school year, Gillingham failed to meet the standard for Pennsylvania Academic Growth in the areas of PSSA Math, PSSA Reading/ELA, Keystone Algebra I and Keystone Literature. (N.T. 628-632, SD 70, SD 72).

FOR THE 2014-15 SCHOOL YEAR, THE CHARTER SCHOOL'S ACHIEVEMENT LEVELS FOR THE PERCENTAGE OF STUDENTS WHO ARE PROFICIENT AND ADVANCED WAS BELOW THE SCHOOL DISTRICT'S SCORES; AS WELL AS THE STATE SCORES.

74. Within the SPP, PDE calculates Indicators of Academic Achievement, with scores of 70 or above being an acceptable level. (N.T. 599-602).

75. Within the SPP for the 2014/2015 school year, Gillingham's Indicators of Academic Achievement showed that 15.38% of its students scored proficient or above on the PSSA/Keystone Exams for Mathematics/Algebra I, 38.46% of its students scored proficient or above on the PSSA/Keystone Exams for ELA/Literature and 14.29% of its students scored proficient or above on the PSSA/Keystone for Science/Biology. (SD 64).

76. Within the SPP for the 2014/2015 school year, the School District's Indicators of Academic Achievement showed that 70.98% of its students scored proficient or above on the PSSA/Keystone Exams for Mathematics/Algebra I, 76.44% of its students scored proficient or above on the PSSA/Keystone Exams for ELA/Literature

and 58.85% of its students scored proficient or above on the PSSA/Keystone for Science/Biology. (SD 65).

77. For the 2014/2015 school year, as measured by the Indicators of Academic Achievement within the SPP, Gillingham's achievement levels for school buildings which were deemed proficient or advanced on the PSSA/Keystone in the areas of Mathematics/Algebra I, ELA/Literature and Science/Biology were not only below the state proficiency level, but were far below the scores achieved by the School District. (N.T. 1976-1978, SD 64, SD 65).

THE CHARTER SCHOOL'S PERFORMANCE PROFILE ACADEMIC SCORE ("SPP") ISSUED BY PDE WAS 67.3 OUT OF 107 FOR THE 2012-13 SCHOOL YEAR, 60.9 OUT OF 107 FOR THE 2013-14 SCHOOL YEAR AND 48.4 OUT OF 107 FOR THE 2014-15 SCHOOL YEAR. THE CHARTER SCHOOL'S SPP SCORES ARE BELOW THE SCHOOL DISTRICT'S AVERAGE SPP SCORES FOR EACH RESPECTIVE YEAR. THE STATE'S REQUIRED SATISFACTORY SCORE OF 70 HAS NOT BEEN MET BY THE CHARTER SCHOOL IN ANY OF THE REPORTING YEARS.

78. SPP also provides a numerical academic performance score for all public schools, including charter schools, where schools can earn up to 100 points, and with an opportunity to earn an additional seven (7) extra credit points. (N.T. 597-599, 1896-1897).

79. The SPP is calculated for each school building and there is no district-wide report issued. (N.T. 597-601, 1368-1369).

80. The score for each school building is based upon indicators that define a high performing school using the following elements: Indicators of Academic

Achievement (40%); Indicators of Closing the Achievement Gap for All Students (5%); Indicators of Closing the Achievement Gap for Historically Under-performing Students (5%); Indicators of Academic Growth (40%); and Other Academic Indicators (10%). (SD 64, SD 65, SD 66, SD 67, SD 68).

81. PDE calculates the score for each school building, and an Academic score of 70 is deemed proficient. (N.T. 597-599, 658, 1963).

82. In the 2012/2013 school year, Gillingham had an Academic Performance Score of 67.3. (SD 68).

83. In the 2013/2014 school year, Gillingham had an academic performance score of 60.9. (SD 66).

84. In the 2014/2015 school year, Gillingham had an Academic Performance Score of 48.4. (SD 64).

85. In the 2012/2013 school year, the School District (High School) had an Academic Performance Score of 72. (SD 68).

86. In the 2013/2014 school year, the School District (High School) had an Academic Performance Score of 78.3. (SD 67).

87. In the 2014/2015 school year, the School District (High School) had an academic performance score of 73.2. (SD 65).

88. Gillingham's SPP scores for each of the three (3) years are below the proficiency level established by Pennsylvania and are declining each year.

89. Gillingham's SPP scores for each of the three years are below the SPP scores of the School District.

THE CHARTER SCHOOL FAILED TO MEET THE 100% HIGHLY QUALIFIED TEACHER (“HQT”) REQUIREMENT DURING THE TERM OF THE CHARTER, AS REQUIRED BY THE NO CHILD LEFT BEHIND ACT AS REPORTED IN THE SCHOOL REPORT CARDS PREPARED BY PDE. IN THE 2012-2013 SCHOOL YEAR, ONLY 85 PERCENT OF THE CORE ACADEMIC CLASSES TAUGHT AT THE CHARTER SCHOOL WERE TAUGHT BY HIGHLY QUALIFIED TEACHERS. IN THE 2013-2014 SCHOOL YEAR, ONLY 74% OF THE CORE ACADEMIC CLASSES TAUGHT AT THE CHARTER SCHOOL WERE TAUGHT BY HIGHLY QUALIFIED TEACHERS.

90. Federal law requires that all public school teachers, including charter school teachers, in core academic subjects be Highly Qualified. 34 C.F.R. § 200.55 (b). (SD 58).

91. In Pennsylvania, a Highly Qualified teacher is one who: (1) holds full certification; (2) has at least a bachelor’s degree; (3) has completed a content area major; (4) has passed a content area test; and (5) has completed teacher education coursework. (SD 58).

92. In the 2012/2013 school year, the FRRM Report noted that only 85% of the core academic subjects taught at Gillingham were taught by Highly Qualified teachers. (SD 58).

93. For that same year, Gillingham submitted a Charter Annual Report from July 1, 2012 – June 30, 2013. (SD 55).

94. In that report, Gillingham represented that is professional staff roster included five (5) appropriately certified special education teachers (including master teachers). (N.T. 427-428, SD 55).

95. Notwithstanding that representation, only four (4) special education teachers (Amy Wislosky, Sarah Kenney, Katelyn Grumbling and Audra Young) are identified by name in that Report. (N.T. 428-429, SD 55).

96. In the 2013/2014 school year, the FRRM Report noted that only 74% of the core academic subjects taught at Gillingham were taught by Highly Qualified teachers (SD 60).

97. For that same year, Gillingham submitted a Charter Annual Report from July 1, 2013 – June 30, 2014. (SD 56).

98. In that Report, Gillingham represented that its professional staff roster included the following appropriately certified special education teachers: Katelyn Grumbling, Sabrina Werley and Audra Young. (SD 56).

99. With respect to Sabrina Werley, the Report noted that her areas of assignment, subject area teaching, or services provided were special education grades 8, 9, 10 and 11. (SD 56).

100. Notwithstanding that representation, Sabrina Werley was not a Highly Qualified teacher for special education in grades 10 or 11. (N.T. 430).

101. With respect to Audra Young, the Report noted that her areas of assignment, subject area teaching, or services provided were special education grades 4, 5, 6, 7 and 8. (SD 56).

102. Notwithstanding that representation, Audra Young was not a Highly Qualified teacher for special education in grades 7 or 8 (N.T. 432).

103. In the 2014/2015 school year, Gillingham submitted a Charter Annual Report from July 1, 2014 – June 30, 2015. (SD 57).

104. In that Report, Gillingham represented that its professional staff roster included the following appropriately certified special education teachers: Megan Piasecki, James Volgelsang, and Audra Young. (SD 57).

105. With respect to Megan Piasecki, the Report noted that her areas of assignment, subject area teaching, or services provided were special education grades K – 9. (SD 57).

106. Notwithstanding that representation, Megan Piasecki was not a Highly Qualified teacher for special education in grades 7, 8 or 9. (N.T. 432-433).

107. With respect to James Volgelsang, the Report notes that his areas of assignment, subject areas teaching, or services provided were special education grades 7 – 12. (SD 57).

108. Notwithstanding that representation, James Volgelsang was not a Highly Qualified teacher in any subject matter other than social studies. (N.T. 433).

109. With respect to Audra Young, the Report noted that her areas of assignment, subject area teaching, or services provided were special education K – 12. (SD 57).

110. Notwithstanding that representation, Audra Young was not a Highly Qualified teacher in special education for grades 7 – 12. (N.T. 434).

111. Nicolle Hutchinson, the CEO of Gillingham, was aware as far as the issuing date of the 2012/2013 FRRM Report that not all of Gillingham's teachers were Highly Qualified as well as the definition of a Highly Qualified teacher. (N.T. 1531-1532, SD 58).

112. Notwithstanding that definition, Gillingham operated under the assumption that since 25% of its teachers did not have to be certified, those uncertified teachers could teach special education. (N.T. 1528-1530).

113. That assumption was in error and in violation of state and federal law.

114. Yet, strangely, in its Charter Annual Report for 2012/2013, Gillingham clearly recognized its obligation when it stated: "No Child Left Behind requires all teachers of core academic subjects to be highly qualified." (SD 55).

115. Gillingham was also required by law to notify parents and guardians of their right to know the professional qualifications of its classroom teachers.

116. To further compound its error, Gillingham sent letters to parents and guardians regarding the professional qualifications of its teachers noting that its "goal is to have 100% of our teachers highly qualified by June 2014 despite the fact that Charter School Law requires only 75% to be highly qualified teachers". (GCS 56).

117. Not only did Gillingham misinform parents and guardians regarding the legally required percentage of highly qualified teachers, it also misinformed parents and guardians of the definition of a highly qualified teacher when it stated: "Highly Qualified teacher" means "that teachers must have the following: (1) A four-year college degree; (2) A standard teaching certificate; and (3) proof of their knowledge in the subjects they teach." (GCS 56).

118. Gillingham failed to meet the 100% highly qualified teacher requirement during the 2012/2013 school year and the 2013/2014 school year.

THE CHARTER SCHOOL FAILED TO MEET ITS LEGAL OBLIGATIONS TO SPECIAL NEEDS STUDENTS APPLICABLE UNDER FEDERAL AND STATE LAW INCLUDING, BUT WITHOUT LIMITATION, THE IDEA, SECTION 504 OF THE REHABILITATION ACT OF 1973 AND CHAPTER 711 OF THE STATE BOARD OF EDUCATION REGULATIONS IN THAT THE CHARTER SCHOOL HAS FAILED TO PROVIDE SERVICES AND/OR DOCUMENT THE SERVICES AS REQUIRED BY LAW.

119. Pursuant to the Charter School Law ("CSL"), Gillingham must comply with all federal laws and regulations governing children with disabilities. 24 P.S. 17-1729-A(a)(5).

120. In its revised charter application, Gillingham noted that its "special education program will be implemented in accordance with applicable federal and state law and regulations which require the GCS to provide a free appropriate public education ("FAPE")". (N.T. 426-427, 1386-1389, GCS 1).

121. Approximately seventy-two (72) of Gillingham's current students have been deemed eligible for special education and related services, or covered under Section 504 of the Rehabilitation Act of 1973 ("Section 504"), twenty-five (25) of whom are residents of the School District. (N.T. 107, 1172-1173).

122. As part of its review of Gillingham's renewal request, the School District retained the services of Andrew Klein, an expert in the area of special education services. (N.T. 101-104).

123. Among his credentials, Mr. Klein formerly served as a Special Education Due Process Hearing Officer in the Commonwealth of Pennsylvania for seventeen (17) years. (N.T. 102-103, SD 26).

124. On behalf of the School District, Mr. Klein performed a special education audit by reviewing a student's entire educational file and speaking with the parents of those students willing to speak to him to determine whether the student made meaningful progress given his/her disabilities. (N.T. 105-108, 197).

125. In its defense, Gillingham retained the services of Brenda Fishman, an expert in special education. (N.T. 1590-1601).

126. Among her credentials, Ms. Fishman was a former special education supervisor for the Philadelphia School District and now works primarily as an educational consultant for charter schools. (N.T. 1590-1601, GCS 99).

127. Mr. Klein prepared an expert report and Ms. Fishman did not. (N.T. 1601, SD 27).

128. Ms. Fishman subscribes to a philosophy that you cannot make a determination of FAPE solely upon a review of records. (N.T. 1617-1618, 1639).

129. Therefore, Ms. Fishman was unwilling to state that any student of Gillingham whose records she reviewed were denied FAPE. (N.T. 1617-1640).

130. However, a denial of FAPE can be determined where expected and required records are missing and where progress monitoring data has been obtained and shows a lack of meaningful progress. (N.T. 5/23/16 at 5-6).

131. Ms. Fishman did, however, acknowledge that best practices require that goals should not be repeated, and when goals are not met they should be revised, and progress monitoring should be reflected in a student's Individualized Education Plan ("IEP"), and that procedural errors can result in a denial of FAPE. (N.T. 1616, 1621-1622, 1632, 1660-1661, 1691, 1698).

132. As part of his audit, Mr. Klein was not permitted by Gillingham to observe any of the students he subsequently audited. (N.T. 288, 1657).

133. Based upon the results of the litigation in Schuylkill County, Mr. Klein reviewed the records of twenty-five (25) students, eighteen (18) of whom were attending Gillingham and seven (7) of whom had transferred back to the School District (N.T. 112-113, 193, SD 27).

134. Of the files reviewed, five (5) were found to be compliant because either the students were receiving FAPE or they had not been in the program for a sufficient period of time to reach a conclusion as to whether or not they were receiving FAPE. (N.T. 113, SD 27).

135. In nine (9) other cases, Mr. Klein found both substantive and procedural errors; however, the students had been there for an insufficient period of time for him to render an opinion as to whether or not they were receiving FAPE. (N.T. 113-114, 193-196, SD 27).

136. For those nine (9) students, errors included internally inconsistent documents, failure of the psychologist to administer testing to all persons to whom the test could have been administered, evaluation reports not showing evidence of a classroom observation, failure to provide services pursuant to a Section 504 Service Agreement, missing goals on IEP's and untimely IEP documents. (N.T. 113-120, SD 27).

137. Mr. Klein did conclude that the remaining eleven (11) students³ were denied FAPE. (SD 27).

138. Student A transferred into Gillingham on November 10, 2014 from a cyber charter school where he/she had been receiving special education and related services. (N.T. 123-125, SD 27, GCS 114).

139. Upon transfer, Gillingham did not provide Student A's parents with the required Notice of Recommended Educational Placement ("NOREP"). (N.T. 123-125, SD 27, GCS 114).

140. Student A's November 9, 2015 IEP contained two (2) identical goals from the IEP inherited from the former school which meant that the student did not master the prerequisite skills to achieve those goals, and therefore, the goals should have been scaled back. (N.T. 125, 207-215, SD 27, GCS 114).

141. Student A's records also reflect that the IEP did not have a mathematics goal, yet progress monitoring was being done in mathematics, and that progress monitoring as well as progress monitoring in reading showed that Student A was not making meaningful progress in either subject. (N.T. 125, 207-221, 296-300, SD 27, GCS 114).

142. In addition, the IEP added an additional disability classification of Specific Learning Disability without the mandated testing or assessment for that determination. (N.T. 126-127, SD 27, GCS 114).

143. Finally, the IEP lacked specificity as required to determine how Student A was to be provided specially designed instruction. (N.T. 126, SD 27, GCS 114).

³ The eleven (11) students were identified as Students A-K, respectively. Their corresponding educational records were subsequently identified as GCS 114-124, respectively. For purposes of this Report and Recommendation, the Students will be referred to by letter.

144. Student A was denied FAPE since November of 2015. (N.T. 126-127, SD 27, GCS 114).

145. Student B entered Gillingham as a kindergarten student in the 2013/2014 school year. (N.T. 129, SD 27, GCS 115).

146. Prior to entry at Gillingham, Student B had been identified as having a specific learning disability in several academic areas as well as a speech and language impairment. (N.T. 129, 227, SD 27, GCS 115).

147. It is extremely rare for a student to be identified as having a specific learning disability while in an early intervention program, and when so identified, it is indicative of serious academic deficiencies. (N.T. 129-130, SD 27, GCS 115).

148. Notwithstanding those deficiencies, Student B was placed in an itinerant program, the least intensive program, where he did not achieve any of his kindergarten academic goals and only one (1) of his four (4) first grade academic goals. (N.T. 130, 229-231, SD 27, GCS 115).

149. Additionally, Student B's record is devoid of any evidence that his goals were revised in kindergarten or first grade when he was not meeting these goals. (N.T. 131-132, SD 27, GCS 115).

150. Student B did not achieve FAPE in either kindergarten or first grade. (N.T. 131, SD 27, GCS 115).

151. Student C entered Gillingham as a sixth grade student in the 2011/2012 school year. (N.T. 134, SD 27, GCS 116).

152. In April of 2012, Student C was evaluated and determined not to be eligible for special education but did qualify for a Section 504 Service Agreement.

(N.T. 135, SD 27, GCS 116).

153. At the same time, Student C was manifesting behavioral difficulties.

(N.T. 134, 142, 1222-1223, SD 27, GCS 116).

154. Notwithstanding the evaluation, Student C's records do not contain any records of Service Agreements for Grades 6 through 8 in violation of federal law.

(N.T. 135-137, 238, 240, 424, 1671-1672, SD 27, GCS 116).

155. Student C was reevaluated in September of 2013 and then in August of 2014, at which point he qualified for special education as being emotionally disturbed and other health impaired, but his behaviors now required a 1:1 staff member.

(N.T. 137-138, SD 27, GCS 116).

156. An IEP was subsequently developed, and a Functional Behavior Assessment ("FBA") was then conducted but its results were never incorporated into any IEP as required by law. (N.T. 138-140, 1448-1452, 1672-1673, 1679, SD 27, GCS 116).

157. The subsequent IEP contained only two (2) behavioral goals despite Student C having twenty-one (21) related behavioral needs. (N.T. 140, 241-242, SD 27, GCS 116).

158. The next IEP written on June 2, 2015 contained the same two (2) behavioral goals from the previous IEP, and there was no measureable progress monitoring of Student C's behaviors. (N.T. 140-142, 243-246, 302-304, SD 27, GCS 116).

159. Despite the two (2) behavioral goals, the number of behavioral incidents doubled, but the IEP was never revised. (N.T. 142-143, 243-246, 306-308, SD 27,

GCS 116).

160. Student C was denied FAPE since entering Gillingham. (N.T. 142-143, SD 27, GCS 116).

161. Student D is an 11th grade student with behavioral issues who entered Gillingham in the 2014/2015 school year. (N.T. 144, SD 27, GCS 117).

162. Student D had previously attended an on-line instructional program and had been identified as having a specific learning disability. (N.T. 145, 250-251, SD 27, GCS 117).

163. Upon entry to Gillingham, an IEP was developed which checked off Behavior as a Special Consideration and provided forty (40) minutes of counseling per month, but no FBA, Positive Behavior Support Plan ("PBSP"), or behavioral goals were developed as legally required. (N.T. 145-149, SD 27, GCS 117).

164. Student D had a single goal for math calculation which was not achieved. (N.T. 146, SD 27, GCS 117).

165. During that year, Student D had twelve (12) disciplinary referrals but Gillingham did not conduct a re-evaluation. (N.T. 147, 248-250, SD 27, GCS 117).

166. A few weeks after the beginning of the 2015/2016 school year, Student D was transferred to a restrictive, highly structured mental health program known as Schuylkill Learning Academy ("SLA") operated by IU 29. (N.T. 144-147, 1229-1231, SD 27, GCS 117).

167. However, Student D transferred without a required re-evaluation to a more restrictive placement and without any consent from Student D's parents. (N.T. 142-143, 248-250, 1680, 1682-1683, SD 27, GCS 117).

168. Student D was denied FAPE since entry to Gillingham. (N.T. 142-143, SD 27, GCS 117).

169. Student E is a first grade student who entered Gillingham in the 2014/2015 school year. (N.T. 150, SD 27, GCS 118).

170. In kindergarten, Student E had ten (10) disciplinary incidents and had twelve (12) incidents this school year. (N.T. 150, 253, SD 27, GCS 118).

171. Following a parental request for an evaluation, Student E was found ineligible for special education and related services, but a Section 504 Service Agreement was warranted. (N.T. 152-153, SD 27, GCS 118).

172. Notwithstanding that, Student E's records contain no evidence that a written 504 Service Agreement was executed and/or that it was implemented in violation of the law (N.T. 153-154, 1683-1686, SD 27, GCS 118).

173. Student E was denied FAPE following the completion of the Evaluation Report. (N.T. 153-154, SD 27, GCS 118).

174. Student F is a 4th grade student who entered Gillingham at its inception. (N.T. 158, SD 27, GCS 118).

175. Prior to entry, Student F had been diagnosed as having a specific learning disability in the areas of reading, writing and mathematics, and was provided with Occupational Therapy and Speech Therapy. (N.T. 158, 255, SD 27, GCS 118).

176. A Re-evaluation Report was completed in May 2014 which maintained the prior diagnoses, but did not test for behavioral issues despite significant attendance problems and behavioral difficulties. (N.T. 158-160, SD 27, GCS 118).

177. The IEP developed thereafter in May of 2014 as well as the IEP's developed in February of 2015 and February of 2016 contain identical goals, no goals for math reasoning or problem solving despite those areas being identified as needs, and no changes in achievement levels for math, sight words or listening comprehension for several years, but at the same time, Student F spent less time in learning support. (N.T. 160-162, 1688, SD 27, GCS 118).

178. In addition, Student F's records show a lack of complete progress monitoring. (N.T. 160-161, 310-311, SD 27, GCS 118).

179. Student F has been denied FAPE for a period of two (2) years. (N.T. 163, SD 27, GCS 118).

180. Student G is a 3rd grade student who entered Gillingham in the 2012/2013 school year. (N.T. 163, SD 27, GCS 119).

181. Following a parental request for an evaluation, a Re-evaluation Report was completed in February of 2014 which diagnosed Student G as having a specific learning disability, a speech and language impairment and as being Other Health Impaired. (N.T. 163, SD 27, GCS 119).

182. The IEP's developed in March of 2014 and February of 2015 contained identical goals, except in the area of speech, with no measureable progress monitoring noted. (N.T. 163-165, 259-262, 311, SD 27, GCS 119).

183. The current IEP of February 2016 now contains revised goals and increases the amount of special education services. (N.T. 164-165, SD 27, GCS 119).

184. Student G was denied FAPE for two (2) years. (N.T. 165, SD 27, GCS 119).

185. Student H is a 9th grade student who entered Gillingham when it opened. (N.T. 165, SD 27, GCS 121).

186. A Re-evaluation Report from March of 2013 consisted of a record review only, with no direct classroom observation, but noted that additional data was needed to complete the evaluation which was never secured. (N.T. 165-166, 266-270, SD 27, GCS 121).

187. At the time, Student H was identified as being autistic with a speech and language impairment, and the IEP subsequently developed had a PBSP, with math levels at the 6th grade level and reading levels at the 7th grade level. (N.T. 166, SD 27, GCS 121).

188. IEP's developed thereafter in March of 2014 and April of 2015 showed no mathematics goal mastery and continued the same previous mathematics goal, and no PBSP with any supporting documentation to explain why it was no longer required. (N.T. 166-167, SD 27, GCS 121).

189. More troubling, Gillingham's own curriculum based assessments showed grade levels of reading and math in the 2nd to 4th grade range, yet Student H was being instructed in reading at the 6th grade level and math at the 8th grade level. (N.T. 168, SD 27, GCS 121).

190. Student H was not provided FAPE for the past three (3) years. (N.T. 168, SD 27, GCS 121).

191. Student I is a 7th grade student who entered Gillingham in the 2013/2014 school year having previously been identified as having a specific learning disability and a speech and language impairment. (N.T. 169, 272, SD 27, GCS 122).

192. Gillingham did not offer a new IEP until September of 2014, six (6) months after the inherited IEP from a prior school district had expired in violation of the law. (N.T. 169, 1705, SD 27, GCS 122).

193. Under that IEP, Student I had goals for speech, math, and reading, and spent 97% of the day in a general education program. (N.T. 169-172, SD 27, GCS 122).

194. Progress monitoring showed minimal progress was achieved under that IEP, as well as under a subsequent IEP dated September of 2015, at which time Student I was placed in a supplemental learning support program for 24% of the day. (N.T. 171-172, SD 27, GCS 122).

195. When a new Re-evaluation Report was written in March of 2016, Student I's present education levels indicated a 1st-2nd grade level despite three (3) years of special education at Gillingham due to Student I not having a sufficient intensity of special education services. (N.T. 172-174, SD 27, GCS 122).

196. Student I did not receive FAPE since entry into Gillingham. (N.T. 174, SD 27, GCS 122).

197. Student J is an 8th grade student of the School District who transferred from Gillingham for the start of the 2015/2016 school year. (N.T. 176, SD 27, GCS 123).

198. The last IEP at Gillingham was from April of 2015 which had Behavior and Communications Considerations checked off, but there was no PBSP or behavioral goals within the IEP as required, or speech and language goals as would be required. (N.T. 176-177, 1470, 1581-1582, 1706, SD 27, GCS 123).

199. That IEP also failed to specify the amount of time, if any, that Student J was spending in special education versus general education as required. (N.T. 177,

SD 27, GCS 123).

200. Student J was being denied FAPE at the time of transfer to the School District. (N.T. 177, SD 27, GCS 123).

201. Student K is a 9th grade student who currently attends SLA, having previously been a student at Gillingham. (N.T. 178, SD 27, GCS 124).

202. In January of 2013, while at Gillingham, an evaluation determined that Student K had a specific learning disability in mathematics and also exhibited elevated levels for depression. (N.T. 178-179, 1565, SD 27, GCS 124).

203. There is no indication in Student K's records that the depression was being monitored, and by the time a Re-evaluation Report was done in January of 2015, Student K was not progressing in mathematics and his behaviors had deteriorated to the point where Student K was now diagnosed as being emotionally disturbed and needed social work services. (N.T. 179-181, 272-274, SD 27, GCS 124).

204. Shortly thereafter, Student K brought drugs to school at Gillingham, and as a result, Gillingham placed him at SLA where, because it is so highly structured and highly managed, Student K began to improve. (N.T. 180, SD 27, GCS 124).

205. Student K remains at SLA, but no longer as a Gillingham student, but as a School District student. (N.T. 180-181, SD 27, GCS 124).

206. Student K was denied FAPE beginning in the 2014/2015 school year. (N.T. 181, SD 27, GCS 124).

207. Eleven (11) of the twenty-five (25) records reviewed by Mr. Klein showed that students, while attending Gillingham, did not receive FAPE. (N.T. 181, SD 27).

208. When a student enrolls in the School District with an existing IEP, he/she must receive comparable services until a new IEP is developed. (N.T. 325-326).

209. Bruce Rossi is the Special Education Supervisor for the Blue Mountain School District ("Blue Mountain"). (N.T. 439).

210. Student M transferred from Blue Mountain to Gillingham for the start of 10th grade at the beginning of the 2014/2015 school year. (N.T. 440, SD 21).

211. Prior to that transfer, Student M had been receiving special education services for many years. (N.T. 440-441).

212. Student M remained at Gillingham for one (1) year and then reentered Blue Mountain for the 2015/2016 school year. (N.T. 440, SD 21).

213. However, when Gillingham sent records to Blue Mountain when Student M returned, there was no documentation that Student M was receiving services at Gillingham and no documentation that Student M's parents had given written consent so that Gillingham did not have to provide special education services. (N.T. 440-445, SD 21).

214. Student Z enrolled in the School District from Gillingham with an existing IEP dated June 18, 2015. (N.T. 325, 327, SD 8).

215. Although the IEP noted that Student Z was receiving itinerant learning support services, the IEP failed, as required, to note either the type of service being provided or the amount of the services being provided. (N.T. 326-328, 331-332, SD 8).

216. After entering the School District, Student Z's records were reviewed by Kelly Brennan, an expert in the field of special education and employed by the School District as its Director of Special Education. (N.T. 365-367, 392-393).

217. The records revealed that an evaluation of Student Z was ongoing when Student Z transferred into Gillingham. (N.T. 393).

218. Gillingham should have immediately issued its own permission to continue the evaluation which it did not, and it did not commence an evaluation until a year later after being requested to do so by Student Z's parents. (N.T. 393-395, SD 8).

219. After the evaluation was completed, Student Z was found eligible for special education. (N.T. 395-396, SD 8).

220. Gillingham violated its child find duties by not taking steps to complete Student Z's evaluation upon entering its school. (N.T. 392-396).

221. Grace Schock entered Gillingham as a kindergarten student, having been previously diagnosed with selective mutism. (N.T. 62-63).

222. As a result of her selective mutism, Grace Schock stopped speaking, outside of her home, prior to kindergarten. (N.T. 62-63).

223. Notwithstanding her diagnosis, literature provided by her parent to Gillingham and Grace's failure to speak in school, Gillingham failed to initiate an evaluation that school year and an evaluation was only conducted because of a parental request. (N.T. 66-67).

224. An Evaluation Report dated February 10, 2012 concluded, nonetheless, that Grace did not have a disability and was not eligible for special education and that a 504 Service Agreement should be developed. (SD 9).

225. No written 504 Service Agreement was put in place for the balance of the kindergarten year or during first grade despite that recommendation.
(N.T. 70-72, SD 9, SD 11).

226. On March 1, 2013, Gillingham completed another Evaluation Report concluding that Grace was eligible for special education with a primary disability classification of emotional disturbance (Selective Mutism) and secondary disability categories of speech or language impairment and specific learning disability. (SD 9).

227. Gillingham violated its child find duties by not timely evaluating Grace, not initially classifying her as eligible for special education, not offering her a written 504 Service Agreement and not providing special education services until March of 2013.

228. Grace Schock eventually enrolled in the School District from Gillingham with an existing IEP dated March 20, 2013. (N.T. 329, SD 9).

229. Although her IEP noted that she was receiving learning support services, the IEP failed, as required, to note her baseline levels in reading and math. (N.T. 330, SD 9).

230. Grace Schock's records also revealed, that in kindergarten, despite being diagnosed with selective mutism, Gillingham failed to evaluate her for special education, and did so only at the request of her parent. (N.T. 396-398, 489-490, SD 9).

231. Despite that diagnosis, Grace Schock was found ineligible for an IEP, but did qualify for a Section 504 Agreement, and it took until the following year for her to be found eligible. (N.T. 398, 529).

232. Gillingham violated its child find duties in not timely evaluating Grace Schock and not finding her eligible for special education until two (2) years later. (N.T. 398, SD 9).

233. On July 30, 2015, PDE issued a Cyclical Monitoring Report of Gillingham's special education records. (GCS 66).

234. In the Cyclical Monitoring Report, PDE issued twenty-one (21) citations to Gillingham. (GCS 66).

235. The first citation was for not having procedures to outline the provision of Assistive Technology (GCS 66).

236. The second citation related to not providing Extended School Year ("ESY") Services for students and not timely notifying parents of their child's eligibility for ESY. (N.T. 1403-1405, 1646-1647, GCS 66).

237. The third citation related to not having proper parent training. (N.T. 1648, GCS 66).

238. The fourth citation related to not having appropriate in-service training for its staff. (N.T. 1648-1649, GCS 66).

239. The fifth citation related to not timely providing FAPE to students who transferred from other public agencies within state and from another state. (N.T. 1405-1406, 1649, GCS 66).

240. The sixth citation required Gillingham to create an improvement plan to detail the development of charter-wide assessments in reading and math. (GCS 66).

241. The seventh citation related to not following protocols regarding securing permission to reevaluate students. (GCS 66).

242. The eighth citation related to not timely disseminating Re-evaluation reports. (GCS 66).

243. The ninth citation related to not documenting evaluation team participants. (GCS 66).

244. The tenth citation related to not documenting whether team members agreed or disagreed with Re-evaluation Report results. (GCS 66).

245. The eleventh citation related to not properly documenting when parents consent to excusing persons from attending IEP meetings. (GCS 66).

246. The twelfth citation related to not having general education teachers attending IEP meetings. (GCS 66).

247. The thirteenth citation related to not documenting students' present levels of academic performance. (GCS 66).

248. The fourteenth citation related to not documenting students' present levels of functional performance. (GCS 66).

249. The fifteenth citation related to not documenting present levels related to current post-secondary goals as part of transition services. (GCS 66).

250. The sixteenth citation related to not addressing present levels related to parental concerns for enhancing the education of the student. (GCS 66).

251. The seventeenth citation related to not having appropriate measurable post-secondary goals as part of transition services. (GCS 66).

252. The eighteenth citation related to not having annual goals related to the student's transition services. (GCS 66).

253. The nineteenth citation related to not documenting progress reporting on annual goals. (GCS 66).

254. The twentieth citation related to not addressing Evaluation Report recommendations for modifications and accommodations in IEP's. (GCS 66).

255. The twenty-first citation related to not gathering information or data by the IEP team to determine Extended School Year eligibility. (GCS 66).

256. When PDE conducts cyclical monitoring, it is concerned with procedure, not the substantive issue of whether or not a student is receiving FAPE. (N.T. 111-112, 277-283, 370-373).

257. Rachel Bensinger is the Director of Organizational Development for Gillingham. (N.T. 2125).

258. Ms. Bensinger has no training in special education. (N.T. 2159-2160, GCS 96).

259. Ms. Bensinger signed two (2) IEP's as the Local Education Agency, or LEA, on behalf of Gillingham. (N.T. 2158-2160).

260. Ms. Bensinger signed those IEP's as the LEA upon the direction of Nicolle Hutchinson. (N.T. 1441-1445, 2157-2159).

261. Ms. Bensinger lacked the legal authority to sign those IEP's as the LEA for Gillingham. (N.T. 413-415, 513, 1441-1445).

262. On September 23, 2011, Ms. Brennan filed a complaint on behalf of a parent to the Pennsylvania Department of Education Bureau of Special Education ("BSE") alleging, in part, that a student had transferred into Gillingham with an existing IEP but that Gillingham was not providing any special education to the student. (N.T. 373-375, SD 23).

263. During the investigation, Gillingham acknowledged that it was not prepared to meet the student's needs at the opening of the school year. (SD 23).

264. BSE determined that Gillingham was not in compliance with federal and state regulations and they were directed to provide compensatory education to the student. (N.T. 373-375, 1379-1382, SD 23).

265. On September 27, 2011, Ms. Brennan filed another complaint on behalf of a parent to BSE alleging, in part, that a student had entered Gillingham with an Individual Family Service Plan from an Early Intervention Program, but that Gillingham was not providing any special education to the student. (N.T. 375-376, SD 24).

266. During the investigation, Gillingham acknowledged that it was not prepared to meet the student's needs at the opening of the school year. (SD 24).

267. BSE determined that Gillingham was not in compliance with federal and state regulations and they were directed to provide compensatory education to the student. (N.T. 373-375, 1382 SD 24).

268. On December 5, 2011, Ms. Brennan filed a joint complaint with a parent to BSE alleging that Gillingham failed to respond to the parent's request for an evaluation to determine eligibility for special education. (N.T. 376-378, SD 25).

269. During the investigation, Gillingham acknowledged that it did not comply with federal and state regulations. (SD 25).

270. BSE determined that Gillingham was not in compliance with federal and state regulations because it did not respond to a parental request for an evaluation. (N.T. 377-378, 1382-1383, SD 25).

271. By letter dated April 16, 2012, Gillingham informed PDE that it had provided compensatory education for seventeen (17) students who were not provided

related services in the fall of 2011, although the record is unclear whether any of those students were the subject matters of the complaints filed in 2011.

(N.T. 1384-1386, GCS 66).

272. On October 22, 2012, Ms. Brennan filed another complaint to BSE on behalf of a parent alleging, in part, that a student failed to receive related services as listed in an IEP. (GCS 62).

273. BSE determined that Gillingham was not in compliance with federal and state regulations and they were directed to provide compensatory education. (GCS 62).

274. Finally, on November 7, 2012, Ms. Brennan filed a joint complaint to BSE with a parent alleging, in part, that Gillingham failed to provide speech therapy services listed in the student's IEP. (GCS 62).

275. BSE determined that Gillingham was not in compliance with federal and state regulations and they were directed to provide compensatory education. (GCS 62).

276. Student L transferred into the School District from Gillingham while in high school. (N.T. 402, SD 13).

277. Ms. Brennan reviewed Student L's records upon transfer. (N.T. 402).

278. Based upon the records, Gillingham violated its child find duties by not evaluating Student L despite exhibiting behavioral problems, discipline issues and utilizing the services of a rebound mentor and advocate. (N.T. 403-405, SD 13).

THE CHARTER SCHOOL HAS FAILED TO COMPLY WITH ITS REPRESENTATION TO PARENTS AND STUDENTS AND GUIDANCE ISSUED BY THE PENNSYLVANIA DEPARTMENT OF EDUCATION IN THAT THE CHARTER SCHOOL HAS FAILED TO TIMELY INFORM THE SCHOOL DISTRICT OF RESIDENCE WHEN A STUDENT HAS ACCRUED THREE OR MORE DAYS OF UNEXCUSED ABSENCES.

279. All students who attend public schools, including charter schools, are subject to the compulsory school attendance laws of Pennsylvania. 24 P.S. §13-1327; P.S. §17-1732-A(a).

280. PDE has informed charter schools and school districts that charter schools must report to the student's school district of residence when a student has accrued three (3) or more days of unexcused absences and that it is the responsibility of the school district to enforce the compulsory attendance laws. (N.T. 1372-1375, 2190, SD 81).

281. On or about January 28, 2015, for the first time since it opened, Gillingham provided the School District with an unexcused absence alert for a student who had three (3) or more unexcused absences, although the record is unclear as to whether or not the student was a resident of the School District. (N.T. 686-689, SD 50).

282. On August 20, 2015, the Board of Trustees of Gillingham adopted a policy which was incorporated into the GCS Student/Parent Handbook for 2015/2016 which stated, in part: "GCS is required to report three days of unexcused absences to the child's school district of residence." (N.T. 2172-2173, 2203, GCS 72).

283. Thereafter, beginning on or about September 14, 2015, Gillingham first began providing the School District with an "Absence Alert Letter" for those students who were residing in the School District who had three (3) or more unexcused absences. (N.T. 689-695, 1376, 2193, SD 54, GCS 73).

284. Prior to that date, Absence Alert Letters were sent only to parents of students. (N.T. 2182).

285. However, prior to that date, there were many Gillingham students each year, who were residents of the School District, that had three (3) or more unexcused absences. (N.T. 686-695, SD 53).

286. Prior to September 14, 2015, Gillingham failed to comply with PDE guidance by not informing the School District when a student had accrued three (3) or more days of unexcused absences. (N.T. 686-695, SD 53, SD 81).

THE CHARTER SCHOOL HAS FAILED TO COMPLY WITH SECTION 504 OF THE REHABILITATION ACT OF 1973, THE PENNSYLVANIA HUMAN RELATIONS ACT, 24 P.S. § 17-1723-A(B)(1), AND /OR GUIDANCE ISSUED BY THE PENNSYLVANIA DEPARTMENT OF EDUCATION BY DISENROLLING STUDENTS WHO ARE HOSPITALIZED AND/OR PLACED IN INPATIENT REHABILITATIVE FACILITIES.

287. As previously noted, Student K attended Gillingham in the 2014/2015 school year. (GCS 124).

288. Following a Reevaluation Report dated January 16, 2015, Student K was found eligible for special education with a primary disability classification of Emotional Disturbance and a secondary disability classification of a Specific Learning Disability. (GCS 124).

289. Shortly before that Report was completed, Student K possessed marijuana at Gillingham, and with parental approval, was placed at SLA for an interim forty-five (45) day placement as permitted by law. (N.T. 406-407, GCS 124).

290. During that interim placement, Student K's parents sent him to Gaudenzia Chambers Hill Adolescent Program, an inpatient drug and alcohol facility, located in the Central Dauphin School District. (N.T. 408, GCS 124).

291. Gillingham then withdrew Student K from their attendance rolls. (N.T. 408-409, GCS 124).

292. After completing the Gaudenzia Program, Student K was not permitted to return to Gillingham because his slot had been filled. (N.T. 408-409).

293. State and federal law prohibit a charter school from disenrolling a student who seeks treatment in an inpatient drug and alcohol facility. (N.T. 409).

294. Even Ms. Fishman conceded that Gillingham's disenrolling of Student K was in violation of the law. (N.T. 1706-1707).

THE CHARTER SCHOOL'S AUDITOR, FOUND AFTER COMPLETING ITS FY 2014 AUDIT, THAT THE CHARTER SCHOOL DID NOT OBTAIN REQUIRED CHILD ABUSE CLEARANCES, FBI BACKGROUND CHECKS AND CRIMINAL HISTORY CHECKS.

295. In its revised charter application, Gillingham represented that no staff member would be permitted to work until all required credentials and clearances were secured as required by law. (N.T. 1073-1077, 1341-1342, GCS 1).

296. For the fiscal year ending June 30, 2014, Gillingham retained SD Associates, P.C. to perform an audit of its financial statements of its governmental activities and its major fund. (N.T. 962, SD 28).

297. During the audit, SD Associates, P.C. became aware of matters that were opportunities for strengthening Gillingham's internal controls and operating efficiency. (SD 28).

298. The auditor tested fifteen (15) employee files and found that three (3) did not contain the required Child Abuse Certificates, three (3) did not contain required

criminal history background checks and two (2) did not contain the required FBI background checks. (N.T. 960-961, SD 28).

299. It is a legal requirement that those certificates and checks be secured before an employee begins work with Gillingham. (N.T. 1343-1344).

300. Nicolle Hutchinson does not dispute the findings by the Auditor. (N.T. 1346-1347).

301. After the audit report was issued, the Auditor sent a chart to Gillingham listing the identities of the employees whose files they had tested. (N.T. 2128, GCS 77).

302. Rachel Bensinger then reviewed the personnel files for those employees whom the Auditor identified as not having the required certificates and checks. (N.T. 2149-2150).

303. She did find clearance certificates for one (1) of the three (3) employees, but no clearance certificates were located for the other two (2) employees. (N.T. 2136-2138, GCS 77).

304. According to Ms. Bensinger, the personnel files were disorganized and unstructured. (N.T. 2150-2151).

**THE CHARTER SCHOOL'S AUDITOR FOUND
AFTER COMPLETING ITS FY 2014 AUDIT, THAT
ALL PERSONNEL FILES DID NOT CONTAIN A
COMPLETED I-9 EMPLOYMENT ELIGIBILITY
VERIFICATION.**

305. As part of its audit for the fiscal year ending June 30, 2014, SD Associates, P.C. determined that six (6) of the fifteen (15) employee files it tested did not contain the

required I-9 Employment Eligibility Verification Form and four (4) others contained I-9 Forms that were not properly signed by Gillingham. (N.T. 961-962, SD 28).

306. It is a federal requirement that an I-9 Employment Eligibility Verification Form be secured before an employee begins work at Gillingham. (N.T. 1344-1346).

307. Nicolle Hutchinson does not dispute those findings by the Auditor. (N.T. 1346-1347).

308. After the chart of the tested employees was received by Gillingham, Rachel Bensinger reviewed the personnel files for those employees whom the Auditor identified as not having I-9 forms or not properly signed I-9 forms. (N.T. 2149-2150, GCS 77).

309. Ms. Bensinger was able to locate all six (6) of the missing I-9 forms as well as the four (4) I-9 forms with signatures by Gillingham personnel. (N.T. 2129-2142, GCS 77).

**THE CHARTER SCHOOL LACKS PROPER
INTERNAL FISCAL CONTROLS, INCLUDING,
BUT NOT LIMITED TO, THE FOLLOWING
EXAMPLES; PAYMENT OF SALES TAX,
PURCHASING OF FRESH FLOWERS, AND/OR
CASH PURCHASES AT YARD SALES FOR
WHICH MANAGEMENT CANNOT PROVIDE
ADEQUATE DOCUMENTATION.**

310. Prior to the adoption of the Nonrenewal Resolution of the School District, Gillingham had no written policy governing internal controls, but had followed procedures and protocols of its own. (N.T. 1511-1512, GCS 81.)

311. None of the yearly audits performed by SD Associates, P.C. has indicated Gillingham has inadequate fiscal controls. (N.T. 1037).

312. On September 20, 2012, Gillingham adopted a Petty Cash Policy which was revised on November 12, 2012, January 21, 2016 and March 29, 2016. (N.T. 1001-1003, 1262-1263, SD 35, GCS 83).

313. Under the Policy revised as of November 12, 2012, petty cash funds may be used for items that cost less than \$300.00, require approval from the Director of Operational Development, and purchases made with petty cash funds require original receipts to be returned to the Petty Cash Manager and subject to review by the Director of Operational Development. (SD 35).

314. In furtherance of the Policy, Gillingham maintained a Petty Cash Replacement Log detailing the date of the purchase, the reason for the purchase and the total purchase amount. (N.T. 1004, SD 36).

315. In the 2011/2012 school year, Gillingham maintained a Petty Cash Expenses Log and Replacement Request which is admittedly in error because it shows a discrepancy in the amount of moneys in the account which is in a higher amount than what it should be in light of the withdraws from the account. (N.T. 1006, SD 37).

316. The Petty Cash Replacement Log showed a number of purchases made at yard sales, which prompted the School District to ask Gillingham to supply supporting documentation. (N.T. 1007, SD 36).

317. Purchases were being made at yard sales to help Gillingham save money. (N.T. 1500).

318. All of the items purchased at the yard sales were made by Nicolle Hutchinson and were utilized by Gillingham. (N.T. 1271, 1550).

319. However, the supporting documentation related to the yard sales was less than ideal because it often lacked specificity as to the item(s) purchased, who received the item(s) or whether the item(s) purchased were then inventoried. (N.T. 1008-1010, 1015, SD 37).

320. In addition to the petty cash being used to make yard sale purchases, some of the petty cash advances were used to make purchases directly from vendors who imposed sales tax upon the items purchased despite Gillingham's tax-exempt status. (N.T. 1011-1013, 1018, SD 34, SD 37).

321. Between February of 2012 and November of 2014, Gillingham made purchases from Flowers by Betty Wagner. (N.T. 1015-1019, 1051, 1264-1270, SD 34).

322. Of the purchases, one was for a Gillingham Board of Trustee member whose relative died, one was for a Board member as a congratulations gift, one was for a Gillingham parent diagnosed with cancer, two were for Gillingham parents whose relatives died, one was for a Gillingham parent who became ill and one was for an employee whose relative died. (N.T. 1015-1019, 1069-1070, 1500-1501, SD 34).

323. One of the purchases from Flowers by Betty Wagner also imposed a sales tax despite Gillingham's tax exempt status. (SD 34).

THE CHARTER SCHOOL HAS FAILED TO MEET GENERALLY ACCEPTED STANDARDS OF FISCAL MANAGEMENT AND/OR AUDIT IN THAT THE CHARTER SCHOOL, THROUGHOUT THE TERMS OF ITS CHARTER, HAS FAILED TO MAINTAIN ACCURATE PROOF OF RESIDENCY RECORDS, BILLED THE SCHOOL DISTRICT FOR STUDENTS WHO DO NOT RESIDE IN THE SCHOOL DISTRICT, BILLED FOR STUDENTS WHO ATTEND THE SCHOOL DISTRICT, INCORRECTLY NOTED WITHDRAWAL DATES, INCORRECTLY NOTED START ENROLLMENT DATES, INCORRECTLY CLASSIFIED STUDENTS AS REGULAR EDUCATION AND/OR SPECIAL EDUCATION AND/OR SUPPLIED INCOMPLETE ENROLLMENT FORMS.

324. Since the inception of its charter, Gillingham retained Charter Choices to pay its bills, collect money, do its payroll, and submit fiscal reports to the State.

(N.T. 1722-1723).

325. Each month, Charter Choices submits an invoice directly to the School District, based upon information supplied by Gillingham. (N.T. 1722-1726, 1760-1761).

326. The School District has the option of paying Gillingham directly, or if it chooses not to do so, Charter Choices then submits the invoice to PDE who pays Gillingham via a redirection of subsidy funds that the School District was about to receive from the State. (N.T. 1772-1776).

327. The School District has never made a direct payment to Gillingham.
(N.T. 1724).

328. Each monthly invoice is considered an estimate for the upcoming month and denotes the number of students, their enrollment dates and whether or not they are regular education students or special education students. (N.T. 890-895).

329. It is the responsibility of Gillingham to maintain accurate enrollment data. (N.T. 1737).

330. Each month following receipt of the invoice, it is reviewed by the School District for accuracy, and when errors are noted, a revised invoice must be sent. (N.T. 752-754, 763, 799-800).

331. The accuracy of this process is dependent upon Gillingham maintaining accurate proof of residency status (School District is only responsible to pay for its resident students), accurate enrollment records (School District is only responsible for its residents who are actually enrolled at Gillingham), and proper classification of students as either regular education or special education students (higher rates for special education versus regular education students. (N.T. 674-675, 1737, SD 44, SD 45, SD 46, SD 47).

332. After the last day of the school year, a reconciliation is completed between Gillingham and the School District based upon the number of days a resident student is enrolled at Gillingham, his or her status as a regular or special education student, and an appropriate payment adjustment is made. (N.T. 679, 1772-1776).

333. The record is very clear that the information supplied by Gillingham to Charter Choices to serve as the basis for the invoices has been, at times, inaccurate as follows: (a) not including School District residents who were enrolled at Gillingham; (b) including School District residents who were no longer enrolled at Gillingham; (c) including non-resident students of the School District; (d) classifying special education students as regular education students; and (e) classifying regular education students as special education students. (N.T. 749-954, SD 44, SD 45, SD 46, SD 47).

334. The record is just as clear that when the School District made inquiries concerning the invoices, sometimes they received answers quickly, and at other times, months passed before either clarification and supporting documentation was received and/or that adjustments were made to the invoices. (N.T. 794-954, SD 44, SD 45, SD 46, SD 47).

335. In the end, all of the issues raised related to inaccurate invoices or inaccurate reconciliation reports have been resolved to the satisfaction of Gillingham and the School District. (N.T. 940-941, 970, 1730).

THE CHARTER SCHOOL, THROUGHOUT THE TERMS OF ITS CHARTER, HAS FAILED TO COMPLY WITH SECTION 1724-A OF THE CHARTER SCHOOL LAW IN THAT EVERY EMPLOYEE OF THE CHARTER SCHOOL HAS NOT BEEN PROVIDED WITH THE SAME HEALTH CARE BENEFITS AS THE EMPLOYEE WOULD BE PROVIDED IF THE EMPLOYEE WERE AN EMPLOYEE OF THE SCHOOL DISTRICT.

336. The CSL requires that every employee of a charter school be provided the same health care benefits as the employee would be provided if he or she was an employee of the local school district. 24 P.S. §17-1724-A(d).

337. In its revised charter application, Gillingham noted that "Medical insurance coverage will be limited to a Preferred Provider (PPO) or an HMO; indemnity coverage will be provided if it can be obtained and if the employee will pay a share of the premiums similar to that paid by school employees in the Pottsville Area School District. Prescription, dental and vision plans will be similar to plans offered to staff in those school districts as providers will offer." (GCS 1).

338. The CSL also provides that a "local board of school directors may require the charter school to provide the same terms and conditions with regard to health insurance as the collective bargaining agreement of the school district to include employee contributions to the district's health benefits plan." 24 P.S. §17-1724-A(d).

339. The School District never sent written correspondence to Gillingham that it had to join the School District's health insurance plan. (N.T. 1060).

340. The revised charter school application also noted that a proposal for medical and dental expenses was provided by BMC Benefit Service to Gillingham, and that "to ensure that the estimated medial insurance coverage for employees is the same as those provided to employees in the Pottsville Area School District, costs and figures from the PASD's medical coverage plan were used by BMC Benefit Service." (GCS 1).

341. As of the commencement date of the charter, the School District provided to its employees three (3) insurance plans: (1) A Traditional Indemnity Plan through Capital Blue Cross initially offered by the Health Insurance Consortium of Schuylkill County, and then, in 2014, offered through a Multi-County Consortium; (2) a PPO Option 1 Plan through Capital Blue Cross; and (3) a PPO Alternative Option 1 Plan. (N.T. 971-975, 2245-2246, SD 40, SD 84).

342. No employee has ever taken advantage of the PPO Alternative Option 1 Plan. (N.T. 2245-2246).

343. Effective January 1, 2016, the Traditional Indemnity Plan was eliminated, and all School District employees were offered only the PPO Option 1 Plan. (N.T. 972).

344. At or near the commencement of the charter, Robert McIntyre, on behalf of BMC Benefit Service, contacted the School District to ascertain the insurance coverage then in effect for the School District. (N.T. 2036-2039).

345. According to Mr. McIntyre, he received information that the School District offered three (3) plans: (1) Traditional Indemnity Plan; (2) a PPO Option 1 Plan; and (3) a PPO Option 4 Plan. (N.T. 2039-2040, GCS 86).

346. Mr. McIntyre then secured insurance modeled after the PPO Option 4 Plan. (N.T. 2055-2058).

347. However, the School District never offered its employees a PPO Option 4 Plan. (N.T. 2244).

348. As of the commencement of the charter, Gillingham provided its employees a PPO Option 4 Plan initially administered by Capital Blue Cross, and then by Geisinger. (N.T. 977-978, 2045-2046, 2059, GCS 94).

349. Notwithstanding that change in providers, the benefit plan offered to Gillingham remained the same. (N.T. 978-979).

350. In 2013, during the course of the School District's annual review of Gillingham, a meeting was held between representatives of the School District and Gillingham to discuss a number of issues, including health care benefits. (N.T. 2248-2249).

351. During that meeting, Ms. Hutchinson expressed that Gillingham only had to provide "similar" health care benefits to that provided by the School District. (N.T. 2251).

352. Following the meeting, and by way of a written response, Gillingham indicated that it never offered a Traditional Indemnity Plan, only a PPO Plan that most closely resembled the School District Plan that it could afford and that was available to it. (N.T. 2252-2253, SD 86).

353. The insurance policies provided by the School District and Gillingham offer the same classes of coverage. (N.T. 1039-1040, 2259-2260).

354. However, a comparison of the respective plans show differences in : (1) the amount of individual and family deductibles in network (higher for Gillingham); (2) the amount of co-pays for both primary care and specialist visits (higher for Gillingham); (3) the costs for emergency room and urgent care visits (higher for Gillingham); and (4) the costs for prescription drug coverage (higher for Gillingham). (N.T. 979-984, 2259, SD 41).

**THE CHARTER SCHOOL, THROUGHOUT THE
TERM OF ITS CHARTER, FAILED TO COMPLY
WITH THE ETHICS ACT IN THAT STATEMENTS
OF FINANCIAL INTEREST WERE NOT COMPLETED
AS REQUIRED BY LAW.**

355. The Commonwealth of Pennsylvania has enacted the Public Official and Employee Ethics Act ("Ethics Act"). 65 Pa.C.S. §1101 et seq.

356. Pursuant to the Ethics Act, public officials and public employees, as those terms are defined by the Act, are required to file a statement of financial interests for the preceding calendar year no later than May 1 of each year that he/she holds such a position and of the year after he/she leaves such a position. 65 Pa.C.S. §1104(a).

357. The statement of financial interests is to be signed under oath and must include specified information for the prior calendar year with regard to the person required to file the statement. 65 Pa.C.S. §1105(a)(b).

358. Any person who violates the provisions of Section 1105(a) of the Ethics Act commits a misdemeanor. 65 Pa.C.S. §1109(b).

359. Trustees of a charter school are considered to be public officials subject to the Ethics Act. 24 P.S. §17-1715-A(11).

360. In addition, anyone who serves as an administrator for a charter school is a public official within the meaning of the Ethics Act. 24 P.S. §17-1715-A(12).

361. The term "administrator" includes 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. 24 P.S. §17-1715-A(12).

362. For the reporting calendar years of 2011 – 2014, twenty-two (22) of the Statements of Financial Interest Forms for public officials and public employees of Gillingham were not in compliance with the Ethics Act. (N.T. 985-987, SD 42).

363. Those deficient forms include ones submitted by members of Gillingham's Board of Trustees, administrators including the CEO, Nicolle Hutchinson on two occasions, and by persons who failed to identify themselves as either Board members or administrators. (N.T. 985-987, SD 42)

364. The errors included not timely filing the Statement of Financial Interest Forms and not completing required information such as the status of the individual submitting the form, the calendar year, occupation or profession, the identity of any real estate interests, creditors, sources of income, gifts, transportation, lodging or hospitality,

office directorship or employment in any business, financial interest in any legal entity in business for profit, or business interests transferred to family members. (N.T. 985-987, SD 42).

365. In fact, the record is undisputed that each of the twenty-two (22) Statements of Financial Interest Forms contain errors and is violative of the Ethics Act.

366. In Gillingham's Charter Annual Report for the years 2013/2014 and 2014/2015 from July 1, 2013 – June 30, 2015, Gillingham "assures that it will comply with the requirements of the Ethics Act..." (SD 56, SD 57).

367. Gillingham, throughout the term of its Forms were not completed as required by law.

DISCUSSION

The Charter School Law ("CSL"), 24 P.S. §§17-1701-A et seq., was enacted to provide teachers, parents, students and community members with expanded choices in the types of educational opportunities that are available within the public school system. It was the intent of the General Assembly that charter schools improve pupil learning, increase learning opportunities for all students and offer diverse and innovative educational techniques while operating independently of the traditional public school system. 24 P.S. § 17-1702-A. Furthermore, the Legislature sought to hold charter schools "accountable for meeting measurable academic standards" to ensure that the charter schools were accomplishing the goals of the CSL. 24 P.S. §17-1702-A(6). Once 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. 24 P.S. §§17-1720-A, 17-1729-A(a)(1).

Section 1729-A(a) of the CSL sets forth the causes for nonrenewal or termination of a charter by a school district. Those causes include:

- (1) One or more material violations of any conditions, standards or procedures contained in the written charter.
- (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.
- (3) Failure to meet generally accepted standards of fiscal management or audit requirements.
- (4) Violation of provisions of [the Charter School Law].

(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.

24 P.S. § 17-1729-A(a).

In order to legally terminate or not renew a charter, a school district must prove that a charter school violated at least one of these provisions. Although the Resolution of the School District did not categorize each alleged violation into a specific subsection of Section 1729-A, they can be classified as follows:

A. FAILURE TO MEET THE REQUIREMENTS FOR SCHOOL PERFORMANCE OR FAILURE TO MEET ANY PERFORMANCE STANDARD SET FORTH IN THE WRITTEN CHARTER⁴

Section 1729-A(a)(2) of the CSL permits a school district to deny renewal of a charter school's charter for failure to meet student academic performance standards or any performance standard set forth in the charter. 24 P.S. §17-1729-A(a)(2); New Hope Academy Charter School v. School District of the City of York, 89 A.3d 731 (Pa. Cmwlth. 2014); Ronald H. Brown Charter School v. Harrisburg City School District, 928 A.2d 1145 (Pa. Cmwlth. 2007). Subsequent to the passage of the CSL, 22 Pa. Code Chapter 5 was repealed and replaced by 22 Pa. Code Chapter 4.

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. Section 4.51 of the regulations sets forth the PSSA and the Keystone

⁴ Section A relates to grounds (a) – (e) of the nonrenewal resolution.

as the measure of student and school performance and sets standards of performance to be measured, including proficiency. 22 Pa. Code §4.51, 4.51a,b. The Chapter 4 regulations further provide that the PSSA and the Keystone are designed to measure “student and school performance consistent with the No Child Left Behind Act”. 22 Pa. Code § 4.51(a)(1).

In New Hope Academy Charter School, the Commonwealth Court addressed the issues of relying upon PSSA test⁵ scores to measure student performance and comparing a charter school’s proficiency rates with that of its school district as grounds for nonrenewal under Section 1729-A(a)(2) of the CSL. Specifically the Court held:

A consistently low percentage of student’s scoring proficient or better on the PSSA constitutes a failure to satisfy Chapter 4 student requirements and is a valid ground for nonrenewal of a school’s charter under Section 1729-A(a)(2) of the Charter School Law where the charter school’s 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. Ronald H. Brown Charter School, 928 A.2d at 1152-1153.

Id. at 737.

The chart below summarizes the performance of both Gillingham and School District students during the term of the charter.⁶

⁵ The New Hope Academy Charter School case was decided before the inclusion of the Keystone Exams became part of the measure of student and school performance.

⁶ No performance records are available for the 2015-2016 school year.

CHART OF ACADEMIC PERFORMANCE

	GCS Proficient or Above	GCS Below Basic	SD Proficient or Above	SD Below Basic	GCS State Target	SD State Target
2011-2012						
Reading	52%	28%	71%	13%	81%	81%
Mathematics	33%	36%	76%	10%	78%	78%
2012-2013						
Reading	51%	28%	69%	14%	70%	70%
Mathematics	42%	33%	72%	10%	73%	73%
SPP Academic Score	67.3		72		70	70
2013-2014						
Reading/Literature	58%	24%	70%	14%	55%	69%
Mathematics/Algebra I	39%	32%	72%	13%	47%	71%
SPP Academic Score	60.9		78.3		70	70
2014/2015						
Mathematics/Algebra I	15.38%		70.98%			70%
ELA/Literature	38.46%		76.44%			70%
Science Biology	14.29%		58.55%			70%
SPP Academic Score	48.4		73.2			70
AGI						
Keystone Literature	-0.93					
Keystone Algebra I	-1.92					
PSSA Reading/ELA	-1.51					
PSSA Math	-2.11					

The chart results are quite compelling. Firstly, except in the area of Reading/Literature in the 2013/2014 school year, Gillingham consistently failed to meet

the Chapter 4 student requirements as measured by the PSSA and Keystone Exams. The percentage of its students who scored proficient or better on the PSSA and Keystone Exams were far below the applicable proficiency standards set by the State in all years of its existence.

Secondly, Gillingham's proficiency rates were substantially below the performance of the School District's schools as a whole during all years of its existence. Additionally, the percentage of its students who scored below basic was substantially higher than those of the School District in all years of its existence.

Thirdly, Gillingham has not shown growth in student performance during its years of existence. Its SPP Academic Scores declined steadily from 2012/2013 through 2014/2015. Its AGI in 2014/2015, did not meet the standard for Pennsylvania Academic Growth in all assessed areas. Quite simply, Gillingham has not shown any real or steady improvement, and, in fact, its student performance has declined.

Fourthly, Gillingham failed to meet its own stated goal of demonstrating student requirements and school success by meeting AYP targets. Further, it failed to meet an objective of the goal that, on average, test scores would increase over the term of the charter sufficient to earn AYP. While AYP was no longer utilized after the 2011/2012 school year, Gillingham did not meet AYP in the 2011/2012 school year, or any subsequent proficiency standard utilized by the State for any of the succeeding years, and its test scores did not increase over the term of the charter.

For all of those reasons, Gillingham has failed to meet the requirements for school performance and the performance standard set forth in its written charter.

B. VIOLATION OF ANY PROVISION OF LAW FROM WHICH THE CHARTER SCHOOL HAS NOT BEEN EXEMPTED, INCLUDING FEDERAL LAWS AND REGULATIONS GOVERNING CHILDREN WITH DISABILITIES⁷

Section 1729-A(a)(5) of the CSL permits a school district to deny renewal of a charter school's charter where the charter school violates any provision of law from which it has not been exempted, including federal laws and regulations governing children with disabilities. Here, the record is clear that Gillingham violated multiple laws and regulations from which it has not been exempted.

Firstly, federal regulations require that all public school teachers, including charter school teachers of core academic subjects be Highly Qualified. 34 C.F.R. § 200.55(b). In the 2012/2013 school year, only 85% of the core academic subjects taught at Gillingham were taught by Highly Qualified teachers. In the 2013/2014 school year, only 74% of the core academic subjects taught at Gillingham were taught by Highly Qualified teachers. In its own Charter Annual Report for 2012/2013, Gillingham recognized its obligation to have all teachers of core academic subjects be Highly Qualified. Yet, it failed to meet the 100% requirement again during the following year. It even went so far as to mislead parents and guardians of its obligation by sending them written notification that its goal was to have 100% of its teachers be Highly Qualified by June 2014 (which it did not meet) despite the fact the charter school law requires only 75% to be Highly Qualified. By not having 100% of its core academic subjects taught by Highly Qualified teachers in 2012/2013 and 2013/2014, Gillingham acted in violation of federal regulations.

⁷ Section B relates to grounds (f) – (k) and (o) of the nonrenewal resolution. Ground (k) while factually true has not been sustained in light of the subsequent location of the I-9 forms.

Secondly, Gillingham consistently and repeatedly violated laws and regulations pertaining to children with disabilities. In its revised charter application, Gillingham had noted that its special education program would be implemented in accordance with applicable federal and state law and regulations which required it to provide FAPE. However, violations began at the inception of the charter and continued throughout the term of the charter. At the outset, Gillingham did not have providers in place to provide related services to disabled students resulting in multiple complaints being filed with PDE leading to compensatory education being awarded in at least seventeen (17) cases. Thereafter, PDE issued a Cyclical Monitoring Report noting twenty-one (21) citations arising from Gillingham's pattern of not complying with special education laws and regulations. And most recently, Gillingham transferred a student to a restrictive, highly structured mental health program without conducting a required re-evaluation and without obtaining prior consent of the student's parents.

In addition to the ongoing nature of the violations, Gillingham violated several different federal and state laws and regulations as follows: (a) Section 504 of the Rehabilitation Act of 1973 by not having written service agreements in place for students who qualified for services; (b) the Individuals with Disabilities Education Act ("IDEA") by not fulfilling its child find responsibilities, not re-evaluating students who were not making meaningful progress, adding additional disability classifications without conducting an evaluation, repeating goals from year to year, not conducting progress monitoring, not conducting FBA's or providing a PBSP or establishing behavioral goals where a student exhibited behavioral difficulties, not providing services to students who entered Gillingham with IEP's, not providing related services as called for in an IEP,

having someone act as an LEA when not qualified to do so, and disenrolling a student who was undergoing treatment in an inpatient drug and alcohol facility; and (c) NCLB in both the 2012/2013 and 2013/2014 school years when special education students were taught by teachers who lacked the appropriate special education certification. Moreover, the special education audit performed by Mr. Klein found that in eleven (11) of the twenty-five (25) files reviewed, students at Gillingham were not receiving FAPE. In three other cases brought to the attention of the School District (Students M, Z and Grace Schock), Gillingham also failed to provide FAPE for all of the students. The bases for the denial of FAPE were pervasive, systematic and indicative of a failure to comply with special education laws and regulations.

Thirdly, Gillingham failed to comply with guidance issued by PDE by not timely notifying the School District when its resident students had accrued three (3) or more days of unexcused absences. PDE had informed charter schools and school districts, that charter schools must report to the student's school district of residence when a student had accrued three (3) or more days of unexcused absences and that it was the responsibility of the school district to enforce the compulsory attendance laws. With one possible exception, at no time prior to September 14, 2015 did Gillingham notify the School District of its resident students who had accumulated three (3) or more unexcused absences. Prior to that date, there were many Gillingham students each year, who were residents of the School District, who had three (3) or more unexcused absences.

Fourthly, state law requires that all employees in public schools, including charter schools, must produce completed child abuse certificates, a criminal history background

check and an FBI background check before commencing employment. In the audit for the fiscal year ending June 30, 2014, Gillingham's auditor noted that of the fifteen (15) employee files it tested, three (3) did not have the legally required child abuse certificate, three (3) did not contain the required criminal history background check and two (2) did not contain the mandated FBI background check. A subsequent search by Gillingham personnel after receiving the audit located clearance certificates for one (1) of the three (3) employees, but no certificates were located for the other two employees, in violation of state law.

Fifthly, Gillingham violated the Ethics Act because twenty-two (22) Statements of Financial Interest Forms for its public officials and public employees were not in compliance with the Ethics Act. The deficient forms included ones submitted by its Board of Trustees, administrators including Nicolle Hutchinson, and by persons who failed to identify themselves as either Board Members or administrators. All this was done despite Gillingham's assurances in its Charter Annual Reports from July 1, 2013 – June 30, 2015 that it would comply with the Ethics Act.

Taken as a whole, it is clear that Gillingham has violated multiple laws and regulations throughout the term of its charter from which it has not been exempted, including laws and regulations governing children with disabilities.

C. VIOLATIONS OF PROVISIONS OF THE CHARTER SCHOOL LAW⁸

Section 1729-A(a)(4) of the CSL permits a school district to deny renewal of a charter school's charter where the charter school violates any provision of the CSL. Section 1724-A(d) requires that employees of a charter school be provided with "the same healthcare benefits as the employee would be provided if he or she were an employee of the local school district." 24 P.S. §17-1724-A(d). (Emphasis added). Given that Gillingham offered its employees a PPO Option 4, which was not the same plan offered by the School District, but which did provide the same classes of coverage but with higher deductibles, higher co-pays for primary care and specialist visits, higher emergency room and urgent care visits, and higher costs for prescription drug coverages, the question becomes whether Gillingham was providing the same healthcare benefits to its employees as that provided by the School District to its employees.

Neither the CSL nor applicable case law provides any definition of the term "same healthcare benefits", and counsel for the parties have not located any authority as well. Accordingly, resort must be made to the Statutory Construction Act. 1 Pa.C.S. §1901 et seq. Section 1921(b) of that Act states that "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." 1 Pa.C.S. §1921(b). Section 1724-A(d) is not ambiguous. The General Assembly used the term "same" not "similar". While no doubt the PPO Option 4 Plan utilized by Gillingham is "similar", it is not the "same." Moreover, Gillingham's interpretation that it only has to provide "similar" healthcare benefits is not

⁸ Section C relates to ground (n) of the nonrenewal resolution.

consistent with the unambiguous language of Section 1724-A(d) that it be the "same". Accordingly, Gillingham has violated Section 1724-A(d) of the CSL.

D. FAILURE TO MEET GENERALLY ACCEPTED STANDARDS OF FISCAL MANAGEMENT OR AUDIT REQUIREMENTS⁹

Section 1729-A(3) permits a school district to deny renewal of a charter school's charter where the charter school fails to meet generally accepted standards of fiscal management or audit requirements. There have been two appellate cases which have addressed this standard.

In Ronald H. Brown v. Harrisburg School District, 928 A.2d 1145 (Pa. Cmwlth. 2007), the Commonwealth Court affirmed the nonrenewal of a charter school that was consistently in debt. The charter school had a history of operating with a general fund balance deficit. Furthermore, the audit of the charter school identified material weaknesses including serious deficiencies involving the recording, summarizing and reporting of financial data, and no ongoing reconciliations for the general ledger accounts. Given that the charter school remained in debt from year to year with that debt consistently growing, the charter school was found not to meet generally accepted standards of financial management.

Subsequently, in Graystone Academy Charter School v. Coatesville Area School District, 99 A.3d 125 (Pa. Cmwlth. 2014), the Commonwealth Court affirmed a Charter Appeal Board decision revoking a charter on three (3) grounds, one of which included a failure to submit timely audit reports. In that case, the school district had revoked a

⁹ Section D relates to ground (l) and (m) of the nonrenewal resolution.

charter finding, in part, that: (a) the charter school had provided inaccurate enrollment data arising from its billing for years of four (4) students as special education students when they were regular education students resulting in the school district overpaying the charter school \$110,398.54; and (b) the charter school had not filed timely financial audits. The Charter Appeal Board found the enrollment data to be a violation, but not “a material violation of such standards”, but did find the failure to file timely audits “a material violation”. On appeal, the Commonwealth Court held that “the Charter School failed to meet generally-accepted standards of fiscal management through its consistent failure to provide the District with accurate enrollment data, resulting in the District overpaying the Charter School \$110,398.54, and by its failure to file timely financial audits.” Id. at 140.

Here, the record does not support a conclusion of failure to meet generally accepted standards of financial management or audit requirements for the following reasons: Firstly, unlike Ronald H. Brown, there is no evidence of any debt or an inability to meet financial demands. Secondly, unlike both Ronald H. Brown and Graystone, there are no issues related to audits. Each year, Gillingham was timely audited and each year there was no finding that Gillingham had inadequate fiscal controls. Thirdly, unlike Graystone where there had been a quantifiable loss arising from inaccurate billing to the school district, here the mistakes in the invoices were corrected and yearly reconciliations were completed. It is no doubt true that Gillingham's enrollment record keeping caused needless extra communication and investigation by the School District, yet it cannot be overlooked that all invoices were corrected and reconciliations completed. Thus, the failure to keep accurate enrollment records is symptomatic of

Gillingham's general disorganization rather than a failure to meet generally accepted standards of fiscal management or audit requirements. Fourthly, while the purchasing at yard sales was accompanied by less than ideal documentation, there was no evidence that the purchased items were not used by Gillingham. Lack of proper documentation is more evidence of disorganization, not a lack of acceptable fiscal management. Lastly, the purchasing at Flowers by Betty Wagner in which items were not always used at the school and the incurring of sales tax at both yard sales and Flowers by Betty Wagner is inappropriate; however, the amount of sales tax paid and the value of the items purchased at Flowers by Betty Wagner is small and does not rise to the level of unacceptable fiscal management.

Accordingly, while Gillingham's record keeping and expenditure of funds was not always appropriate, the School District has not proven that Gillingham failed to meet generally accepted standards of fiscal management or audit requirements.

**E. MATERIAL VIOLATIONS OF ANY CONDITIONS, STANDARDS
OR PROCEDURES CONTAINED IN THE WRITTEN CHARTER¹⁰**

Section 1729-A(a)(1) of the CSL permits a school district to deny renewal of a charter school's charter where the charter school materially violates any condition, standard or procedure contained in its written charter. While the term "materially" is not defined in the CSL, PDE has held that "material violations are substantive breaches in the terms and conditions of the charter school." (GCS 129). In Graystone, the Commonwealth Court held that the charter school's failure to meet academic

¹⁰ Section E relates to grounds (a)-(e), (g), (i) and (j) of the nonrenewal resolution.

performance goals set forth in its written charter was a material violation of the charter. Id. at 139.

Here, Gillingham represented in its revised charter application that it would demonstrate student achievement and school success by meeting AYP targets and that, on average, its test scores would increase over the term of the charter sufficient to meet AYP. As previously noted, Gillingham never made AYP, never met any subsequent proficiency standard established by the State and its test scores did not increase over the term of the charter. The core purpose of the CSL is to improve student's education. New Hope at 739; 24 §P.S. 17-1702-A(1)(2)(6). Nothing could be a more material violation of a charter than not fulfilling goals and objectives related to the very purpose of establishing a charter school.

Also, in its revised charter application, Gillingham represented that its special education program would be implemented in accordance with applicable federal and state laws and regulations which require it to provide FAPE. As previously noted, throughout its charter, Gillingham violated Section 504, IDEA and NCLB. In so doing, Gillingham also committed material violations of its charter which is also in direct contradiction to the purpose of establishing a charter school.

Finally, in its revised charter application, Gillingham represented that no staff member would be permitted to work until all required credentials and clearances were secured as required by law. In two (2) of the fifteen (15) personnel files tested by its own auditor, there were missing credentials and clearances. The General Assembly enacted legislature requiring such documents to ensure student safety. As such, Gillingham

committed a material violation of its charter by not securing clearances and certificates for all its employees prior to permitting them to work.

CONCLUSIONS OF LAW

1. Gillingham committed one or more material violations of conditions, standards or procedures contained in the written charter. 24 P.S. §17-1729-A(a)(1).

2. Gillingham failed 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 and failed to meet performance standards set forth in its written charter. 24 P.S. §17-1729-A(a)(2).

3. Gillingham did not fail to meet generally accepted standards of fiscal management or audit requirements. 24 P.S. §17-1729-A(a)(3).

4. Gillingham violated provisions of the CSL. 24 P.S. §17-1729-A(a)(4).

5. Gillingham violated provisions of law from which it has not been exempted, including federal laws and regulations governing children with disabilities. 24 P.S. §17-1729-A(a)(5).