

**INVESTIGATIVE REPORT REGARDING ALLEGATIONS OF
RACIAL DISCRIMINATION AND BIAS IN THE SCHOOL
DISTRICT OF PHILADELPHIA'S CHARTER RENEWAL
PROCESSES**

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I. EXECUTIVE SUMMARY

Following increased public attention regarding the School District of Philadelphia's closure of Black-led charter schools, the Board of Education for the School District of Philadelphia (the "Board of Education") engaged Ballard Spahr LLP ("Ballard") to conduct an independent investigation into allegations of racial bias in charter school authorizing and renewal practices (the "Investigation").¹ Ballard also engaged the Center for Urban and Racial Equity ("CURE") on the Board of Education's behalf to assist with its legal and investigative analysis.

The racial, economic, and social issues attendant to this Investigation are incredibly complex and are subject to wide-ranging debate. However, several principles serve as the foundational context for the factual findings and observations in the pages that follow.

First, the closure of a child's school – whether a traditional public school or a public charter school – is one of the most socially and educationally disruptive events a child can experience. The closure interrupts academic and social development and disconnects students from a community of teachers and classmates – all of which is compounded by the stress of finding a new school. Government officials entrusted with the authority to influence and make such decisions should not do so lightly.

Second, the Board of Education's obligation to be a protective and careful steward of public funds used for public education and avoiding racially inequitable outcomes are not mutually exclusive. Effective regulation of publicly funded but independently-run charter schools must ensure that charter operators are accountable to the public and provide quality education to their students. This inevitably means that objectively high-performing charter schools should be supported to grow, while objectively underperforming or unsustainable charter schools may need to undergo transformation or closure as a last resort. Nevertheless, if the government's pursuit of accountability produces racially imbalanced outcomes, it should seriously evaluate whether alternative processes exist that would similarly serve its goals. That the government believes that its actions are appropriate under the law should not dissuade the government from immediately responding to public concerns, facilitating public discourse, and exploring potential solutions.

Third, a substantial body of research shows that students of color have better academic outcomes when their school environments have racially and ethnically diverse leadership and faculty – particularly school leaders and teachers who share the same racial and ethnic backgrounds. Thus, a regulatory process that disproportionately impacts schools led by people of color – whether intentional or unintentional – should raise concerns that the process may be detracting from its own goal of improving student achievement.

This Investigation focused principally on analyzing allegations raised by the African American Charter Schools Coalition ("AACSC") that charter authorizing practices are biased against Black-led and/or Black-founded charter schools in Philadelphia. This Report documents a wide range of facts, allegations, concerns, and questions that were raised during the course of the Investigation

¹ At the time of submission, the members of the Investigation Team were Marcel Pratt, Emilia McKee Vassallo, Elizabeth Wingfield, Nina Kalandadze, and Erin Fischer of Ballard Spahr LLP (collectively, the "Investigation Team"). Ballard provided its legal services on a *pro bono* basis.

in order to provide full context for the matters discussed herein (*see* Methodology, Part II). Based on the information provided during the Investigation, the Investigation did not identify any intentional acts of racial discrimination or bias, based on the race of a charter school leader, committed by any members of the Board of Education, School Reform Commission, or the Charter Schools Office; however, the evidence showed that the District was aware for several years that charter schools led by people of color, including Black-led charter schools, encountered unique challenges under its regulatory processes, and that the District took no meaningful actions to address internal or external concerns until the public calls for this Investigation. The Investigation also revealed that a number of other charter authorizing issues, such as inherent conflicts of interest for the District, low transparency, and lack of training on implicit bias and anti-racism for high-ranking decision makers, contributed to concerns of racial bias and inequity.

Ultimately, the goal of this Report is to inform forward-looking solutions, which was also the focus of many stakeholders who participated in the Investigation. We emphasize that addressing the matters raised in this Report will require significant collaboration among all stakeholders – the Board of Education, the Charter Schools Office, government officials, charter operators, and others with a vested interest in the success of Philadelphia’s public education system.

Below is a high-level summary of our factual findings.

1. From 2010 to 2021, the District voted not to renew or to revoke the charters of thirteen (13) charter schools; eight (8) of the closed schools were Black-led charter² schools. Between 2010 and 2021 (the “Relevant Time Period”), the number of charter schools fluctuated. In 2010, for example, there were 74 charter schools in Philadelphia.³ By 2021, there were 85 charter schools.⁴ During the Relevant Time Period, the Board of Education determined not to renew or to revoke the charters of 13 schools; 8 of those schools were Black-led. The Black-led charter schools that closed in the Relevant Time Period are as follows:

Name of School	Year Charter Granted	Year Charter Ceased Operation
Delaware Valley Charter High School	2000	2017

² See Methodology, Part II for a discussion of the definition of “Black-led” and “Black-founded” charter schools.

³ Pennsylvania Dep’t of Educ., Pennsylvania Charter School Enrollment Data 2010-2011, <https://www.education.pa.gov/K-12/Charter%20Schools/Pages/Annual-Reports-Data-and-Resources.aspx>.

⁴ Pennsylvania Dep’t of Educ., Pennsylvania Charter School Enrollment Data 2010-2011, <https://www.education.pa.gov/K-12/Charter%20Schools/Pages/Annual-Reports-Data-and-Resources.aspx>; Chester Holland, Philadelphia Public School Enrollment, 2020-21 and 2021-22, 9, <https://www.philasd.org/research/wp-content/uploads/sites/90/2022/03/Enrollment-2021-22-Research-Brief-March-2022.pdf>.

Name of School	Year Charter Granted	Year Charter Ceased Operation
Eastern University Academy Charter School	2009	2019
Khepera Charter School	2004	2019
Imani Education Circle Charter School	1999	2016
New Media Technology Charter School	2004	2016
Universal Bluford Charter School	2010	2023
Universal Daroff Charter School	2010	2022
Walter D. Palmer Leadership Learning Partners Charter School	2000	2014

Even though the votes occurred outside of the Relevant Time Period for the Investigation, it is worth noting that, while the Investigation was pending, the Board of Education voted to commence nonrenewal proceedings against Southwest Leadership Academy Charter School, a Black-led charter school, on June 23, 2022 and voted not to renew its charter on June 29, 2023.

Thus, Black-led charter schools have been subject to nonrenewal proceedings and/or closure actions in greater numbers than their peers.

2. **As early as 2017, the District recognized internally that it had been closing “minority-led” charter schools at a concerning rate.** The Investigation did not yield any evidence that the District took meaningful steps to address or investigate the issue. Nor did the District otherwise characterize the matter as one of urgent concern. District witnesses largely could not recall when the District became concerned about the closure of Black-led charter schools. Indeed, those interviewed largely denied that there were any concerns about these issues until the AACSC raised them preceding this Investigation. But, a review of internal District emails showed that in December 2017, an SRC commissioner requested from the CSO the “minority led status of all charter school nonrenewal/closure actions in Philadelphia.” Further, in March 2018, a high-ranking CSO employee created a chart that identified closed charter schools and whether each closed school had been led by a person of color. It is noteworthy that this high-ranking CSO employee did not reveal the existence of the chart to the Investigation Team during an initial interview. The employee later justified the decision by rationalizing that, even though the Investigation Team had asked a series of questions regarding the closure of Black-led schools, the interviewers had not asked *specifically* about a chart regarding the closure of Black-led schools. While the employee did not recall the purpose of the chart or how it was used, the Investigation Team ultimately determined that the chart was created at the request of an SRC member. None of the District witnesses could recall what, if anything, was done with the analysis, leaving the Investigation to conclude that the District did not take meaningful steps to explore or address the issue.

In March 2019, the CSO authored a “briefing” presentation regarding the closure of Black-led schools that, among other things, identified “steps to address inequities in our systems.” However, the steps included “initiatives” that had previously existed for some time (e.g., “transparent guides and annual reports”) and a new newsletter, but otherwise did not identify any new or urgent actions to address the admitted inequities. In June 2019, another high-ranking employee justified the closure of minority-led schools, citing that over the past six years the CSO had “elevated the bar for school performance and compliance” and that those schools were underserving students and not complying with the law. Ultimately, however, the individual concluded that the CSO was not “able to effectively and independently lead [a] dialogue” regarding “support for schools led by people of color.” The Investigation Team interpreted this statement and the context in which it was made as a concern that the CSO was not equipped to explore solutions to address the issue.

The District never fully evaluated whether to explore alternative processes, within the confines of the Charter School Law, that would achieve the District’s objectives of ensuring charter school accountability and improving academic outcomes for students but with less of an effect tied to race.

3. Approximately 75% of Black-led charter schools that closed were independently operated or “standalone” charter schools, which, as the District has recognized, generally do not have the same resources available as schools that are supported by a charter management organization (“CMO”). A standalone charter school is a single school established to provide an alternative to a traditional public school. Many charter schools founded by Black leaders arose to address the needs of a specific community or with a community-focused mission. On the other hand, schools operated by a CMO exist within a network of schools under common management that share support structures, including personnel, supervision, and resources. Empirical studies cited *infra* show that Black-led charter schools are more likely to be standalone schools,⁵ which do not have the same infrastructure, economies of scale, and the motive to expand as CMOs and therefore, are more likely to encounter regulatory hurdles. The District’s own analyses recognized this dynamic, stating in 2019 that “[n]ationwide, charter school laws do not ensure equitable funding or facilities help,” and that “90% of charters that fail because of financial reasons [are] independent, grassroots startups” and that “[m]any charter schools led by Black and Latino CEOs are independently operated.” On February 26, 2021, a high-ranking CSO employee acknowledged in a discussion regarding “BIPOC-led schools” that “[w]e know that authorizing frameworks can be burdensome for schools, especially our BIPOC-led schools that tend not to be affiliated with CMOs.” The Investigation did not find any evidence that the District has explored effective alternatives or modifications to its framework that might not be as burdensome for standalone schools led by people of color.

The District has the discretion to conduct such an evaluation. For example, while the Charter School Law requires charter schools to abide by generally accepted standards of fiscal management or audit requirements, the CSO has recognized that the law itself does not identify

⁵ See Ian Kingsbury, Robert Maranto & Nik Karns, *Charter School Regulation as a Disproportionate Barrier to Entry*, 1:27 URBAN EDUC. 14 (2020) (“Black and Latino applicants are considerably less likely to affiliate with an EMO or CMO.”).

specific authorizing standards for financial stewardship, giving the CSO substantial discretion in defining such standards.



4. **The authorizing model in Pennsylvania – requiring the District to both fund and regulate “competing” charter schools – inherently creates conflicts of interest for the District, which further complicates its relationship with Black-led charter schools.** The authorizing model in Pennsylvania inherently imputes a financial conflict of interest to the already-underfunded and under-resourced District.⁶ This conflict is further complicated by the reality that the District’s enrollment-trend analyses show concern that charter-school enrollment in Philadelphia continues to increase while enrollment in traditional public schools has been on a flat or downward trajectory. In 2019, an internal summary of interviews with Board members stated that “[t]he vast majority think the number of schools and seats should remain the same or be somewhat lower.” Internal District presentations evinced a concern regarding the increased costs to the District associated with charter school enrollment growth in recent years.⁷ Moreover, the District conducts an impact analysis each time a charter school is slated for closure to predict the five-year impact the closure will have on the District’s finances. Many District witnesses emphasized, however, that financial decisions do not factor into charter-authorizing decisions. And, interviews with Board of Education and SRC members corroborate that their authorizing votes are primarily informed by their analysis of the information presented to them by the CSO. Nevertheless, the financial reality – supported by District employees with knowledge of its finances – is that having a smaller charter school sector will allow for more funding for traditional public schools to some extent. This conflict might be less pronounced if the District were adequately funded more generally. Many Black-led charter schools cited this conflict of interest as one of the reasons why the District has subjected Black-led schools, particularly Black-led standalone schools, to nonrenewal proceedings.

At least one high-ranking member of the CSO contended that the District had a different type of conflict of interest: as an authorizer, the CSO could not both regulate *and* provide objective, useful support to charter schools. Another CSO employee stated that the CSO refrained from providing

⁶ This conflict is not created by Philadelphia, but by the local education agency authorizing model mandated by the Commonwealth’s Charter School Law. 24 P.S. § 17-1717-A. Moreover, thought leaders have observed that this conflict often arises when this model is used, so this problem is not unique to Philadelphia or even Pennsylvania. See NACSA, *Authorizer Types Across the Country*, <https://www.qualitycharters.org/authorizer-types/> (last visited June 20, 2023).

⁷ See, e.g. The Sch. Dist. of Phila., *School District of Philadelphia Releases Report on the Stranded Costs of Charter Schools* (Mar. 9, 2017), <https://www.philasd.org/communications/2017/03/09/school-district-of-philadelphia-releases-report-on-the-stranded-costs-of-charter-schools/>.

“proactive” and/or “granular” support to a charter school in certain instances of non-compliance because the CSO cannot be the reason why charter schools do or do not have their charters renewed; also, these schools could ultimately be adverse to the Board of Education in litigation based on future authorizing decisions. Not all CSO employees shared this view and some employees seemed to favor providing more support. However, the office’s philosophy regarding the level of support it can appropriately provide is inconsistent. These conflicts inform the rationale for Recommendation VI.A, which recommends that the District facilitate public hearings regarding the benefits and disadvantages of an independent authorizing model and, in the interim, that the District separate any charter support or assistance initiatives from its regulatory function.

5. Unlike other jurisdictions, no organization exists in Philadelphia for the primary purpose of providing support to charter schools. The District’s internal analyses recognize that, unlike other major cities, Philadelphia does not have a dedicated non-profit charter support organization to provide technical assistance and guidance to charter schools. For example, New Schools for New Orleans and New York City Charter School Center serve as this type of a supporting organization in New Orleans and New York City respectively.⁸ Board of Education Policy 400 (Charter Monitoring Structure) envisions that the CSO could provide compliance-related technical assistance to charter schools and leaders at a “reasonable fee.” As discussed *infra*, this dynamic is particularly troubling for Black-led charter schools, many of which are standalone charter schools that lack the significant infrastructure and support network available to schools associated with CMOs.

6. The District uses “surrender clauses” primarily with “minority-led” schools, according to an internal CSO analysis. Generally, a surrender clause is a provision in a charter agreement, agreed to by the District and school, requiring the charter school to surrender its charter automatically if the Board of Education determines that the school did not meet the conditions of the agreement, forgoing any rights to appeal or challenge to the Board of Education’s determination. Surrender clauses are not illegal. However, schools with few resources and less bargaining power are more likely to accept such clauses and a surrender clause insulates the Board of Education’s later nonrenewal or revocation decisions from appellate scrutiny – whether by the Charter Appeals Board (“CAB”) or the judiciary. A March 2019 presentation regarding the closure rates for minority-led schools showed that 75% of charter schools with surrender clauses were “minority-led.” Yet, despite the fact that surrender clauses have been used for more minority-led schools, the District has not meaningfully investigated why they are used primarily against these schools, including Black-led schools.

7. Concerns regarding the District’s transparency and accessibility of information relating to charter authorizing practices cause mistrust among Black-led

⁸ See About Us, New York City Charter School Center, <https://nyccharterschools.org/about-us/> (last visited June 13, 2023) (“For nearly 20 years, the New York City Charter School Center has served as the leading expert and proponent of New York City’s charter school movement. We help new charter schools get started, support existing schools and build community and political support so that high quality charters can flourish.”); Our Priorities, New Schools for New Orleans, <https://newschoolsforneworleans.org/who-we-are/our-priorities/> (last visited June 13, 2023) (“At NSNO, we help expand educational opportunities for our children in New Orleans through work across our five priorities.”).

charter schools. With Black-led charter schools comprising 61.5% of all closures during the Relevant Time Period (2010-2021), it is reasonable for some Black-led charter schools to question authorizing practices that could offer additional transparency. Several issues were raised during the Investigation:

- a) *Sunshine Act.* Board of Education meetings held for the purpose of deliberating agency business or taking official action must be open to the public; however, the Board of Education may hold non-public executive sessions for limited purposes, such as collecting information or educating Board of Education members or to conduct quasi-judicial deliberations. To the extent certain meeting practices or actions were identified as problematic or suspicious, the Investigation did not reveal any clear Sunshine Act violations during the nonrenewal process. It is noteworthy, however, that the SRC and Board of Education often used executive sessions to receive the same presentation from the CSO regarding charter school performance that the CSO planned to present at a public meeting. One Board of Education member described executive sessions as an opportunity for Board of Education members to “temperature check” each other on CSO’s presentations and recommendations; this gave the Investigation Team pause. The “temperature checks,” if occurring outside of the quasi-judicial or other permissible context, could potentially delve into official action, straw voting, or deliberations. During the Investigation, some SRC and Board of Education members questioned whether the use of executive sessions was appropriate at times.

Throughout the Investigation, Black-led charter schools expressed skepticism regarding the CSO’s discussion with the Board of Education in executive sessions. Part of the charter schools’ concern is that they are not given an opportunity to present their perspective at these executive sessions (where they contend deliberation is occurring on whether to initiate non-renewal proceedings) and must wait until the public comment portion of a Board of Education meeting to present their position. At that point, their concern is that Board of Education members may already have negative views towards the charter school based on the CSO’s presentation at the executive session. This concern is further exacerbated by charter schools’ opinion that they are not given sufficient time to have a discussion with the CSO between learning their school will be recommended for nonrenewal and the publication of the recommendation. We recommend that the District increase transparency in the charter renewal process by providing schools with increased opportunities to be heard prior to public votes and confirming that its deliberations occur in the proper setting, as explained in Recommendation VI.C.

- b) *ACE Reports.* The CSO publishes online the Annual Charter Evaluation report (“ACE report”) and the reports evaluating each charter school’s request for renewal of its charter (“ACE-R report”). Both ACE and ACE-R reports are based on the Framework – an evaluation rubric used by the CSO. The Investigation finds that the ACE and ACE-R reports, however, are objectively difficult to scrutinize and comprehend, as they omit any sufficiently detailed rationale supporting the scoring. Moreover, many interviewed during the Investigation reported that the Framework, itself, is an inaccessible evaluation tool for those within the charter school sector

and the public at large. While the Investigation notes that there are likely some within the charter sector that are well-versed in the Framework, the criticism voiced by those interviewed, as well as the difficulty that the Investigation Team itself encountered in comprehending and analyzing the Framework, raises concerns about its function as tool to evaluate and inform not only school leaders, but the broader public. Moreover, according to the CSO, if a charter school is interested in receiving the detailed rationale underlying a rating, it can request a conversation with the CSO or get other additional resources from the CSO, as it would not be fully explained on the face of the report. More accessible, explanatory reports would assist not only charter schools, but also parents who choose to review the reports. It may also help alleviate concerns of bias. *See Recommendation VI.E.*

In 2021, the CSO implemented the Category Rating Business Rules (the “Business Rules”) to provide for greater objectivity and consistency in its evaluation of the standards contained within the Organizational Compliance domain. It is unclear, however, prior to the implementation of the Business Rules how, if at all, the CSO ensured that it measured Organizational Compliance standards fairly and consistently across all schools.

- c) *Hearing Officers.* The Board of Education has delegated its legal responsibility to preside over nonrenewal hearings to a hearing officer, whom contracts with the District (“Hearing Officer”). The President of the Board of Education, without public deliberation, chooses a Hearing Officer unilaterally. Over the Relevant Time Period, the Hearing Officer has found in favor of the Board of Education and against the charter school in each of the nonrenewal hearings for which the officer issued a report. For years, the Board of Education selected the same individual for roughly 75% of nonrenewal hearings. The law would not prohibit the Board of Education from adopting, for example, a system through which the charter school sector has the opportunity to opine on the process for selecting the Hearing Officer(s). *See Recommendation VI.B.* Adopting such a system may also alleviate concerns of bias.
- d) *Similar Schools Groups.* The CSO measures charter schools’ compliance with some of the standards under the Academic Success domain by comparing the evaluated school’s performance to the District average and to schools in its Similar Schools Group (“SSG”) average; each charter school has an SSG. Several charter school leaders criticized the SSG methodology for its lack of clarity. Moreover, while the SSG attempts to control for the relative poverty levels of students, it does not require comparison to schools in the same neighborhood. Many charter school leaders vocalized that comparison to neighborhood schools is more appropriate because community-level dynamics render citywide comparisons incomplete. Several school leaders expressed frustration that based upon the manner in which the SSG is determined, they do not receive credit for the fact that their charter schools outperform District schools that are in the closest proximity to their charter schools.

8. The Board of Education and the CSO do not receive implicit bias training as part of their onboarding onto the Board and CSO, respectively. Implicit bias training is generally a best practice, particularly for officials and executives with significant decision-making authority.

See Part. IV.A.1.

It is also worth noting that the Framework allows for subjectivity and discretion in deciding how to score a charter school's performance without any or with little accompanying justification. Accordingly, because of the absence of uniform and contemporaneous explanations for the Framework, the Investigation was not able to determine whether or not the CSO has exercised its scoring discretion under the Framework in a discriminatory manner or in a manner that has a discriminatory effect, even if unintentional. See Recommendation VI.D.

9. The Investigation has not revealed any evidence of intentional, overt racially discriminatory acts by any SRC commissioner, Board of Education member, or CSO employee against a charter leader; however, the individual complaints raised by charter school leaders raised issues that corroborated systemic reasons for the concerning rate of closure of Black-led charter schools. In Part IV.C, this Report discusses discrete issues raised by individual charter schools in connection with the Investigation. Upon reviewing all of the evidence provided to the Investigation Team, we did not find any evidence of *intentional* acts of discrimination, based on the race of a charter school leader, by SRC commissioners, Board of Education members, or CSO employees. We note that the Investigation, however, was limited to an evaluation and analysis of only those allegations that were raised during the course of the Investigation rather than specific allegations provided before the Investigation began. Moreover, the District was not in possession of any discrete complaints outlining specific allegations of intentional discrimination. Further, it is worth noting that not every charter leader who spoke with the Investigation Team chose to raise an individual claim of intentional discrimination. Rather, many opined that the charter authorizing system suffered from systemic bias⁹ and other flaws, and chose to share their negative experiences more generally as well as recommendations for improvement.

These findings are further explained and substantiated in the pages that follow by witness interviews, document reviews, academic literature, and news reports. Our findings are based on the totality of the evidence, and where sources of information disagree, we have been careful to note as much. We also note that several limitations (discussed below) impacted the Investigation's findings. The Report reflects the opinions and conclusions of the Investigation Team and are not made on behalf of any other person or entity.

⁹ "Systemic and structural racism are forms of racism that are pervasively and deeply embedded in and throughout systems, laws, written or unwritten policies, entrenched practices, and established beliefs and attitudes that produce, condone, and perpetuate widespread unfair treatment of people of color. They reflect both ongoing and historical injustices." Paula A. Braveman et al., *Systemic And Structural Racism: Definitions, Examples, Health Damages, And Approaches To Dismantling*, 41:2 HEALTH AFFAIRS 171, 171–72 (2022), <https://doi.org/10.1377/hlthaff.2021.01394> (internal citation omitted).

In Part VI (“Recommendations”), we set forth a set of comprehensive recommendations to address the above issues.

II. INVESTIGATION ASSIGNMENT AND METHODOLOGY

The Board of Education for the School District of Philadelphia (the “Board of Education”) engaged Ballard Spahr LLP (“Ballard”) in September 2021 to conduct an independent investigation into allegations of racial bias in charter school authorizing and renewal practices. Ballard provided its legal services on a *pro bono* basis. Ballard also engaged the Center for Urban and Racial Equity (“CURE”) on the Board of Education’s behalf to assist with its legal and investigative analysis. Upon consultation with the Board of Education, which received input from the African-American Charter School Coalition (“AACSC”), Ballard determined that this fact-finding investigation would explore:

- Whether there are systemic issues in the charter renewal process in Philadelphia that had discriminatory effects on Black-led and Black-founded charter schools;
- Whether there was objective factual support for specific allegations of racial bias alleged by Black charter leaders during the Investigation; and
- Other aspects of charter authorizing practices that affect racial equity.

Additionally, at the base of the AACSC’s allegations regarding racial bias in the charter renewal process in Philadelphia was the allegation that Black-led and founded charter schools were closed at a disproportionately high rate when compared to other charter schools. Indeed, during the Investigation’s relevant time period – 2010 through 2021 (the “Relevant Time Period”) – the SRC or the Board of Education determined not to renew or to revoke the charters of the following schools, resulting in their closure¹⁰:

- Arise Academy Charter High School (2014)
- Delaware Valley Charter High School (2016)
- Community Academy of Philadelphia (2013)¹¹

¹⁰ This list does not include, for example, those schools for which the Board of Education had initiated revocation or nonrenewal proceedings but the school opted to close before the conclusion of those proceedings.

¹¹ In 2013, the SRC voted to revoke Community Academy of Philadelphia’s charter. After the Hearing Officer recommended revocation, and the SRC adopted that recommendation, the school appealed the decision to the CAB. CAB reversed the revocation, finding that the SRC failed to establish that Community Academy of Philadelphia had not met student performance standards or that the school had failed to meet generally accepted standards of fiscal management. *Community Academy of Philadelphia Charter School v. School District of Philadelphia*, CAB No. 2013-12, 51–53 (June 1, 2015), [https://www.education.pa.gov/K-12/Charter%20Schools/Appeals/Charter%20Board%20Appeal%20Opinions/2013-12](https://www.education.pa.gov/K-12/Charter%20Schools/Appeals/Charter%20Board%20Appeal%20Opinions/2013-12/Charter%20Schools/Appeals/Charter%20Board%20Appeal%20Opinions/2013-12)

- Eastern University Academy Charter School (2018)
- Khepera Charter School (2017)
- Imani Education Circle Charter School (2014)
- New Media Technology Charter School (2015)
- Olney Charter High School (2019)
- John B. Stetson Charter School (2019)
- Truebright Science Academy Charter School (2013)
- Universal Bluford Charter School (2021)
- Universal Daroff Charter School (2021)
- Walter D. Palmer Leadership Learning Partners Charter School (2015)

All but two of the schools listed above (Community Academy and Truebright) were identified by the AACSC as “minority-led.”¹²

The various systemic aspects of the charter school authorization and renewal processes and their impact upon Black-led and -founded schools that the Investigation evaluated included:

- Whether the manner in which charter schools are funded under Pennsylvania law and whether the role of the Board of Education as the authorizer of brick and mortar charter schools in Philadelphia presents an inherent conflict of interest;
- Whether Black-led charter schools are more likely to face barriers to accessing resources;
- Whether the renewal process is biased, onerously costly, or unfair; and
- Whether the criteria and the complexity of the evaluation metrics used by the Charter Schools Office (“CSO”) in its evaluation of charter schools in Philadelphia are unfairly burdensome upon Black-led charter schools.

[12.%20Community%20Academy%20of%20Philadelphia%20Charter%20School.pdf](#). As such, the school remains open today despite the SRC’s 2013 revocation decision.

¹² Schools do not self-identify to the Board of Education/the CSO regarding the racial identity of the school’s founders and/or leaders. As such, the Investigation Team utilized the list the AACSC provided as a proxy for this information. The Investigation Team did not include Arise on any list of Black-founded or Black-led schools after a review of the members of the “founding coalition” in the charter application and identifying the CEO at the time of nonrenewal.

Given that this Investigation did not begin with a formal complaint or a discrete collection of specific allegations, the Investigation Team explored allegations as they arose during the Investigation.

In conducting the Investigation, the Investigation Team took the following actions:

- Submitted formal document requests to the School District of Philadelphia (the “District”) through the Office of General Counsel (“OGC”), and numerous other *ad hoc* document requests, to obtain documents relevant to the CSO and to the School Reform Commission’s (“SRC”) and/or Board of Education’s processes with regard to evaluating charter schools, including each school closed during the Relevant Time Period;
- Attended AACSC press conferences and communicated with members of AACSC leadership to ascertain their allegations and concerns;¹³
- Attended Board of Education meetings during which matters relevant to the charter school renewal process and Black-led and founded charter schools were discussed;
- Attended a public hearing of the Committee on Education of the Council of the City of Philadelphia on February 22, 2023 that was held pursuant to Resolution 210218, which authorized the “Committee on Education to hold hearings to identify and examine potential systemic biases in oversight that create inequalities between Black and White led schools, resulting in fewer resources or support for Black-founded and -led institutions.”¹⁴
- Ran searches across over 1 million electronic files in the District’s possession¹⁵ to both prepare for interviews of relevant individuals and to investigate allegations of discrimination;

¹³ For example, the AACSC held a press conference regarding the renewal of the charter for Laboratory Charter School on June 9, 2022, at the District’s offices located at 440 N. Broad Street, Philadelphia, PA 19130. However, the recommendation for Laboratory Charter School occurred outside of the Relevant Time Period and, therefore, was not a subject of the Investigation. Thus, while the Investigation Team attended the press conference to better understand the AACSC’s grievances related to the allegations in this matter, the Investigation Team did not investigate any claims raised at the press conference.

¹⁴ City Council – City of Philadelphia, *Resolution 210218* (Mar. 11, 2021), <https://phila.legistar.com/LegislationDetail.aspx?ID=4836963&GUID=B83AF368-D3CA-4EA3-9162-16D8155A51AB&Options=&Search=>.

¹⁵ The overwhelming majority of documents that the Investigation Team had access to or searched were not relevant to the Investigation. Upon submitting this Report, the Investigation Team is returning any and all electronic and other documents provided by the District to the District’s OGC.

- Searched tens of thousands of hard copy documents from the Office of Auditing Services at the District, the CSO, and from the District’s archives.
- Reviewed a host of secondary sources, including the academic literature cited in this Report.

Additionally, the Investigation Team interviewed 40 individuals who had information relevant to the Investigation.¹⁶ These interviews were conducted from April 2022 through May 2023.¹⁷ The 40 individuals included: (i) 12 current and former CSO employees; (ii) 10 current and former members of the Board of Education and/or the SRC; (iii) at least 5 representatives from member schools of the AACSC;¹⁸ (iv) representatives of 14 Black-led charter schools; (v) 2 former District employees; and (vi) a national thought leader in charter authorizing practices.¹⁹ These interviews, which ranged in length from approximately one hour to four hours, were conducted both virtually and in person. During the interviews, the Investigation Team did not reveal to District interviewees whether any particular charter school leader participated in the Investigation. This Report omits the names of interviewees and other persons because certain individuals asked that the Report, if published by the Board of Education, not attribute statements to them by name.

¹⁶ After the Investigation Team concluded the interview process and while drafting this Report, the Investigation Team learned of allegations related to a former District employee responsible for auditing charter schools’ financials. The allegations related to this employee’s alleged anti-charter school views. The Investigation Team did not interview this former employee.

¹⁷ The interviews were neither recorded nor transcribed.

¹⁸ Because the AACSC’s membership lists are not public, unless those interviewed disclosed to the Investigation Team their school’s membership in the AACSC, the Investigation Team could not definitively confirm how many representatives from AACSC’s member schools it interviewed.

¹⁹ The Investigation Team attempted to contact a representative from each school that was closed during the Relevant Time Period, as well as a White-led comparator school, however, not all representatives responded to Ballard’s request to participate in an interview. Ultimately, Ballard was unable to make contact with representatives for the following 5 schools: Arise Academy Charter High School, Delaware Valley Charter High School, New Media Technology Charter School, Truebright Science Academy Charter School, and Khepera Charter School. The Investigation Team’s analysis of the circumstances surrounding the closure of those schools is, therefore, limited to documents and information that the District provided to Ballard in response to Ballard’s document requests. A number of Black-led charter schools identified one charter school that predominately serves White students in Philadelphia as a comparator school. We attempted to interview that school, but they did not respond to our outreach.

In or around October 2022, the District engaged the law firm Schnader Harrison Segal & Lewis LLP to assist the Office of General Counsel (“OGC”) with expediting the production of documents and making witnesses available to the Investigation Team.²⁰

The Investigation Team provided this final Report to the OGC. The Investigation Team retained editorial control over the Report. The Board of Education will decide whether and when to publish the Report, including whether to redact any of its contents.

The Investigation was subject to several limitations that are critical to consider when reviewing this Report.

- There is no consensus definition of what constitutes a “Black-led” or “Black-founded” charter school. Accordingly, no uniform or consensus list of Black-led and Black-founded charter schools exists. Although, as the Investigation notes, a CSO employee attempted to compile a list at the request of an SRC member, the District does not formally track the race or ethnicity of charter school leaders or founders or define the “leadership” of a school. District witnesses also posited that the “leader” of a charter school could be a number of persons, including the chief executive officer of the school, a principal,²¹ the chair of the school’s nonprofit board, a CMO executive or administrator, or the “public face” of the school.
- To the extent statistical analyses in this Report reference “Black-led” or “Black-founded” charter schools, the reference includes a group of charter schools that: (1) were identified by the AACSC; (2) were identified and/or corroborated by documents prepared by District employees; (3) self-identified as Black-led or “Black-founded”; and/or (4) were identified by the Investigation Team based on information in the public domain or in consultation with the District.²² The Investigation Team identified 37 schools as “Black-led” or “Black-founded” which were in operation for some portion of the Relevant Time Period. For many of these schools, particularly those identified by AACSC, the leader was the *school’s* CEO or top executive reporting directly to the school’s board of trustees *and* was the person primarily responsible for speaking publicly on behalf of the school. However, it is conceivable that other reasonable alternatives exist for defining “Black-led” and “Black-founded” schools. Accordingly, it is possible that the

²⁰ On June 1, 2023, the attorney whom the District retained to assist in its efforts to expedite the production of documents and make witnesses available for interviews left the Schnader firm and joined Welsh & Recker, P.C.

²¹ In November 2017, a CSO employee was discussing the definition of “leader” in the context of a news post regarding charter leaders of color. The employee commented on the difficulty of defining the leader and noted that a Black principal could provide “strong cover for white male led CMOs....”

²² Conducting a citywide survey of charter schools would have been an alternative, empirical method to compile a list and definition of Black-led and Black-founded charter schools; however, a survey was not feasible for several reasons, including that not all charter schools agreed to participate in this Investigation and, as stated above, the lack of a consensus on the definition of “leader.”

schools referenced in this Report and underlying analysis do not represent the entire universe of schools who would identify as “Black-led” or “Black-founded” schools under one or more definitions.

- The Investigation Team did not have regulatory or subpoena power to compel participation of third parties in this Investigation.
- The data provided to the Investigation Team did not enable the execution of any kind of multivariate or multiple regression analysis.
- The Investigation Team did not receive all of the information that we requested; some information was not feasible or too burdensome for the District to compile.

These limitations also advise against using this Report for any purpose other than that for which it was intended.

III. BACKGROUND

In this Section, we provide a historical overview of certain issues impacting public education in Philadelphia to provide context for the analysis that follows. We discuss historical racial inequity in the District, the decades-long litigation regarding the District’s failure to desegregate its schools, litigation regarding the Commonwealth’s school funding structure, and the creation and eventual disbandment of the SRC. Additionally, in this Section we provide a snapshot of charter schools in the District today, discussing Pennsylvania’s Charter School Law, Philadelphia’s charter schools, and the CSO. Finally, we provide a brief overview of the AACSC and its interactions with the District.

A. The School District of Philadelphia

1. *The Desegregation of the School District of Philadelphia*

Like many school districts in this country, the 223-year-old School District of Philadelphia has long struggled with the racial inequity. The effects of legal and *de facto* segregation in public education remain apparent today, particularly in schools that primarily serve children of color. For purposes of this report, this history of educational segregation in Philadelphia is critical context for understanding the importance of having Black leaders and educators within public schools, whether they are District-run or charters.

In the ten years following the United States Supreme Court’s landmark decision in *Brown v. Board of Education of Topeka*, segregation of schools in Philadelphia increased.²³ Throughout the 1960s, attempts to desegregate Philadelphia schools faced steadfast bureaucratic resistance.²⁴ The

²³ Anne E. Phillips, *A History of the Struggle for School Desegregation in Philadelphia 1955-1967*, 72 PA. HIST.: A J. OF MID-ATLANTIC STUD., NO. 1, 5 (2005).

²⁴ *Id.*

District’s redrawing of school boundary lines, assignment of students and teachers, and opposition to busing kept schools racially homogenous.²⁵

In 1964, the Pennsylvania Human Relations Commission (the “Commission”) filed a discrimination claim against the Chester County School District pursuant to the Pennsylvania Human Relations Act of 1955 (the “PHRA”), a matter that would have significant implications for public education across the Commonwealth, including in Philadelphia.²⁶ The Commission argued that the Chester County School District violated the PHRA by operating a racially segregated school district.²⁷ More specifically, the Commission asserted that (i) requiring the Chester County School District to affirmatively desegregate schools (identified by the Commission) was within the scope of the Commission’s jurisdiction, and (ii) that the Chester County School District was in violation of the PHRA by relying on its neighborhood school system (which relegated Black students to predominantly Black, or Black-only, schools) to desegregate schools without a mandate from the district requiring desegregation.²⁸ Ultimately, the Pennsylvania Supreme Court ruled that education offered in racially imbalanced settings is discriminatory, whether intentional or unintentional.²⁹ Most importantly, the Pennsylvania Supreme Court upheld the authority of the Commission to require school districts within the Commonwealth to employ corrective actions within their districts to eliminate *de facto* racial segregation,³⁰ notwithstanding the end of *de jure* or legalized racial segregation.

In 1965, the Philadelphia Federation of Teachers (the “PFT”) – the sole collective bargaining unit for teachers in the School District of Philadelphia – advocated for the use of a voluntary teacher transfer plan.³¹ This plan would have provided Black and White teachers with the option to teach at majority-Black or majority-White schools. Black public school advocates, however, were not in favor of this plan, advocating instead for a forced teacher transfer program, which would have

²⁵ *Id.* at 51-52; CAMIKA ROYAL, NOT PAVED FOR US: BLACK EDUCATORS AND PUBLIC SCHOOL REFORM IN PHILADELPHIA 11–22 (H. Richard Milner IV, 2022); *see also* Sojourner Ahébee, *Philly Students Secure Historical Marker Commemorating 1967 School Walkout Notorious for Rizzo Brutality*, WHY? (June 24, 2020) <https://whyv.org/articles/philly-students-secure-historical-marker-commemorating-1967-school-walkout-notorious-for-rizzo-brutality/> (last visited June 17, 2023).

²⁶ Malik Morrison, *An Examination of Philadelphia’s School Desegregation Litigation 2*, PENN GSE PERSPECTIVES ON URBAN EDUC. (2004), <https://urbanedjournal.gse.upenn.edu/archive/volume-3-issue-1-fall-2004/examination-philadelphia-s-school-desegregation-litigation>.

²⁷ *Pa. Human Relations Com v. Chester Sch. Dist.*, 427 Pa. 157 (1967).

²⁸ *See generally id.*

²⁹ *Chester Sch. Dist.*, 427 Pa.157; *see also* Morrison, *supra* note 26, at 4.

³⁰ *Chester Sch. Dist.*, 427 Pa. at 169–72.

³¹ ROYAL, *supra* note 25, at 12–13.

essentially mandated integration of the faculty across the District.³² Ultimately, the Board of Education chose not to impose a mandatory teacher integration plan.³³

At the same time, the Board of Education placed further scrutiny upon the qualifications of Black teachers, nearly all of whom were teaching in historically Black schools.³⁴ During this period, many of these Black teachers were classified as “long-term substitutes” and as such, did not maintain formal teaching certifications.³⁵ In 1967, however, following the institution of the National Teacher Exam (“NTE”), the District planned to terminate teachers who did not pass the NTE, notwithstanding their tenure or experience teaching with the District.³⁶ The District replaced those who failed the NTE with college graduates.³⁷ Although these college graduates also had not passed the NTE, the District hired these teachers on a provisional basis.³⁸ This was not unique to Philadelphia. Nationwide, including in Philadelphia, as a result of the NTE, numerous long-standing and experienced Black teachers lost their jobs.³⁹

Further, between 1963 and 1967, the District attempted to alleviate overcrowding in Black schools and foster integration by designing a transportation program that would transport Black students to White schools and White students to Black schools.⁴⁰ To determine which Black students would be selected to attend White schools, the District utilized standardized testing, whereby it selected top-scoring Black students for the busing program.⁴¹ Additionally, under the auspice of alleviating overcrowding, the District attempted to bus Black students from one Black school to another, instead of busing them to White schools.⁴² This approach resulted in White schools remaining predominantly White, and Black schools remaining almost entirely Black.⁴³ And, even where

³² *Id.* at 12–13.

³³ *Id.*

³⁴ *Id.* at 17.

³⁵ *Id.* at 13, 17.

³⁶ *Id.* at 17; see also John Wilder, *1,000 Teachers Here Facing Loss of Jobs*, PHILA. TRIBUTE, June 10, 1967.

³⁷ ROYAL, *supra* note 25, at 17.

³⁸ *Id.*

³⁹ *Id.* at 17; see also R. Scott Baker, *The Paradoxes of Desegregation: Race, Class, and Education, 1935-1975*, 109:3 AM. J. OF EDUC. 320, 338 (2001); *Long Term ‘Sub’ Teachers To Get the Ax*, PHILA. TRIBUNE (Aug. 22, 1967).

⁴⁰ ROYAL, *supra* note 25, at 12–13; Phillips, *supra* note 23, at 60.

⁴¹ ROYAL, *supra* note 25, at 13.

⁴² Phillips, *supra* note 23, at 60–64.

⁴³ ROYAL, *supra* note 25, at 12–17.

schools purported to be integrated, inequity persisted. For example, Black students who attended historically White schools were often taught by substitute teachers, and Black and White students continued to be separated even within the same school building.⁴⁴

The continued segregation of the District, and inequity that it caused, culminated in a large student protest on November 17, 1967, when approximately 3,500 Black students from schools throughout Philadelphia walked out of their classrooms and gathered at the District's headquarters to protest for better conditions in their schools.⁴⁵ The students sought to increase the number of Black school leaders, as well as the addition of Black history and culture in the District's curriculum.⁴⁶ The students – who were engaged in peaceful protest – were met with violence and resistance at the orders of then-Chief of Police, Frank Rizzo.⁴⁷ During the protest, Rizzo dispatched two busloads of police and ordered the officers to “get their Black [expletive].”⁴⁸ Rizzo further led the charge as police beat the student-protesters.⁴⁹ The protest resulted in 22 individuals injured and 57 individuals arrested.⁵⁰ However, despite being met by force, in the years that followed, Black students would continue to advocate for the infusion of Black culture into their education.

In the late 1960's, pursuant to the PHRA and consistent with *Chester School District*, the Commission required 17 different school districts – including the District – to submit desegregation plans to the Commission.⁵¹ The District submitted its desegregation plan to the Commission in 1969.⁵² In 1970, the Commission rejected the District's plan and filed a complaint asserting that the District was unlawfully segregated in violation of the PHRA.⁵³ After an investigation and a hearing, the Commission found that the District was in violation of the PHRA,

⁴⁴ *Id.*

⁴⁵ ROYAL, *supra* note 25, at 22; *see also* Ron Whitehorne, *1967: African American Students Strike, Survive Police Riot to Force Change*, CHALKBEAT PHILA. (Sept. 25, 2002, 9:31 am), <https://philadelphia.chalkbeat.org/2002/9/25/22185400/1967-african-american-students-strike-survive-police-riot-to-force-change>.

⁴⁶ ROYAL, *supra* note 25, at 22; *see also* Whitehorne, *supra* note 45.

⁴⁷ Whitehorne, *supra* note 45.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ William P. Herron, *School Desegregation, the Philadelphia Experience* 4 (1975), <https://files.eric.ed.gov/fulltext/ED103546.pdf>.

⁵² *Id.*

⁵³ *Id.*

and ordered the District to submit an integration plan and timetable.⁵⁴ The District appealed and the Commonwealth Court affirmed the Commission's orders requiring the District to submit plans to correct *de facto* segregation within its schools but remanded the matter to the Commission for necessary modifications of its order.⁵⁵ Following this decision, the Commission issued an amended order that required the District to submit to the Commission its plan and timetable by January 1973 to eliminate racial imbalance in its schools.⁵⁶ After the District failed to meet this and an extended deadline, the Commission initiated enforcement proceedings and the Commonwealth Court required the District to submit a plan by February 15, 1974.⁵⁷ To meet this deadline and to develop an acceptable plan, the Board of Education formed a committee to formulate its desegregation efforts.⁵⁸ This committee utilized methods recommended by the Commission as well as those implemented in neighboring districts, including the following:⁵⁹

- **School pairing:** Combining two school-attendance zones for schools that serve students from the same grade level (*e.g.*, two K-6 schools – one populated with Black students, and one with White students), grouping students by grade level (*e.g.*, grades K-3 and 4-6), and designating one building to serve one set of students (K-3), and the other building to serve the other set of students (4-6).
- **Central schools:** Creating a single school to serve one grade for all children in a certain geographic area.
- **School closure:** Closing a segregated school and enrolling students from the closed school into other schools throughout the city.
- **Magnet schools:** Creating schools that offer particular curricula focused in specific subject areas.

⁵⁴ *Id.*

⁵⁵ *Id.* See also *Sch. Dist. v. Pa. Human Relations Com.*, 294 A.2d 410, 414–15 (Pa. Commw. Ct. 1972) (sustaining portion of Commission's orders requiring appellant school districts to submit plans to achieve racial balance in their student population to relieve *de facto* segregation under the authority of the Human Relations Act, but remanding the portion of the order requiring the District to develop an affirmative staff recruitment plan because there were no specific allegations of discrimination in hiring practices), *aff'd by Uniontown Area Sch. Dist. v. Pa. Human Rels. Comm'n*, 313 A.2d 156 (Pa. 1973); *Pa. Human Relations Comm'n v. Sch. Dist.*, 638 A.2d 304, 306 (Pa. Commw. Ct. 1994) (hereinafter "*Pa. Human Relations Comm'n P*").

⁵⁶ Herron, *supra* note 51, at 4–5; *Pa. Human Relations Comm'n I*, at 306.

⁵⁷ Herron, *supra* note 51, at 4–5; *Pa. Human Relations Comm'n I*, at 306.

⁵⁸ Herron, *supra* note 51, at 4–5

⁵⁹ *Id.*

- **Education complex:** Grouping together a number of schools close in proximity, and designating each school to focus on a particular subject.
- **Education parks:** Combining school facilities.

The District implemented these techniques with varying levels of success.⁶⁰ Moreover, the District faced a number of challenges to its efforts including its size as well as staffing and logistical issues.⁶¹ Additionally, the segregation of Philadelphia's neighborhoods, the variance in the quality of neighborhood schools, and the resources available in each of these neighborhoods, created additional challenges in the implementation of the Commission's recommendations.⁶²

Between 1975 and 1983, the District submitted various plans to the Commission to address shortcomings of prior plans, which were largely rejected.⁶³ In 1988, the Commission notified the District that maximum feasible desegregation had not been achieved under a 1983 memorandum of understanding, and a settlement team was appointed to independently evaluate the District's progress toward desegregation.⁶⁴ In 1992, the settlement team found that a great majority of Philadelphia's public schools were segregated and concurred that the District had not achieved maximum feasible desegregation.⁶⁵

After further proceedings, the Commonwealth Court issued a remedial order in November 1994 compelling the District to undertake action to remedy the historical discrimination found to exist against Black and Hispanic children attending racially isolated public schools and to provide them with an equal educational opportunity.⁶⁶ In its remedial order, the Court incorporated "the student, parent, teacher and principal as central participants in the educational reform effort, high academic standards and elimination of racial disparities in academic achievement as the primary missions, and rigorous curriculum framework as its core."⁶⁷ By the beginning of the twenty-first century, the Commonwealth Court acknowledged that the District had made progress in complying with

⁶⁰ *Id.* at 13; *see also* Phillips, *supra* note 23.

⁶¹ Herron, *supra* note 51, at 13.

⁶² *Id.* at 5–11, 16–19.

⁶³ *See Pa. Human Relations Comm'n I*, 638 A.2d at 306–07.

⁶⁴ *Id.* at 307.

⁶⁵ *Id.*

⁶⁶ *Pennsylvania Human Relations Comm'n v. Sch. Dist.*, 651 A.2d 186, 188 (Pa. Commw. Ct. 1994) ("*Pa. Human Relations Comm'n I*"). In 1999, the Pennsylvania Supreme Court remanded to proceed with the enforcement of the Commonwealth Court's 1994 Remedial Order. *Pennsylvania Human Relations Commission v. School District of Philadelphia*, 732 A.2d 578 (Pa. 1999) ("*Pa. Human Relations Comm'n IIP*").

⁶⁷ *Human Relations Comm'n I*, 651 A.2d at 189; *see also Pa. Human Rels. Comm'n v. Sch. Dist. of Phila.*, 784 A.2d 266, 267 (Pa. Commw. Ct. 2001) ("*Pa. Human Relations Comm'n IV*").

the remedial order while also recognizing that there had been “indefensible delays in providing an equal educational opportunity to children in the racially isolated schools.”⁶⁸ Ultimately, the case led to nearly 40 years of litigation, including appeals and enforcement proceedings, before the parties reached a resolution in 2009 settling on the District’s pledge to improve school quality.⁶⁹

2. *Persistent Inequity in the District & Litigation Regarding the Commonwealth’s Funding Structure*

The fights for desegregation, equitable funding, and the provision of quality education for Black students in Philadelphia continued well beyond the Civil Rights era. And, many – scholars, educators, politicians, and others – cite the lack of adequate funding for Philadelphia’s public schools as the foundation of the inequity the District faces. In 1993, the Pennsylvania legislature voted to alter the way in which funds are distributed to schools within the Commonwealth.⁷⁰ Specifically, the General Assembly sought to ensure that funds allotted from the Commonwealth to school districts no longer increased in response to increases in enrollment, proportion of students with special needs, and ability to raise local taxes, among other factors.⁷¹ Because Philadelphia experienced increased enrollment during the 1990s and has a disproportionately high number of students with special needs, this change in funding was especially harmful to the financial health of the District.⁷²

Two lawsuits were filed to address this inadequate funding.⁷³ In 1997, the City of Philadelphia, the District, and students filed suit against the Commonwealth of Pennsylvania, alleging that it failed to provide the District with adequate funding and, thereby, deprived the District’s students of adequate education in violation of Article 3, Section 14 of the Pennsylvania Constitution.⁷⁴ The court dismissed the plaintiffs’ claim with prejudice, stating that necessary relief would be

⁶⁸ *Pa. Human Relations Comm’n IV*, 784 A.2d at 274.

⁶⁹ Steven L. Nelson and Alison C. Tyler, *Examining Pennsylvania Human Relations Commission v. School District of Philadelphia: Considering How the Supreme Court’s Waning Support of School Desegregation Affected Desegregation Efforts Based on State Law*, 40 SEATTLE UNIV. L.R. (2017); Consent Order entered July 13, 2009, *Pa. Human Relations Comm’n v. Sch. Dist. of Phila.*, No. 1056 C.D. 1973 (Pa. Commw. Ct. filed Aug 6, 1973) (consent order settling the case); see also Valerie Russ, *Today: Hearing to fight Jim Crow Education in Philly Schools*, THE PHILA. INQUIRER (Jul. 13, 2009).

⁷⁰ Eva Travers, *Philadelphia School Reform: Historical Roots and Reflections on the 2002-2003 School Year Under State Takeover*, PENN GSE PERSPECTIVES ON URBAN EDUC. 1–2 (2003), <https://urbanedjournal.gse.upenn.edu/archive/volume-2-issue-2-fall-2003/philadelphia-school-reform-historical-roots-and-reflections-2002->.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.* at 2.

⁷⁴ *Marerro by Tabales v. Commonwealth*, 709 A.2d 956, 958 (Pa. Commw. Ct. 1998) (“*Marerro I*”).

legislative in nature and not subject to judicial intervention.⁷⁵ Ultimately, the Pennsylvania Supreme Court affirmed the decision.⁷⁶

A year later, a group of plaintiffs, the Board of Education, as well as the Mayor, students, parents, and community members brought suit against then-Governor Ridge and other state officials, alleging that the manner in which the District was funded discriminated against school districts with large numbers of non-White students.⁷⁷ Ultimately, in 2001, the District agreed to stay the case amidst negotiation with the Commonwealth over its decision to take over the District.⁷⁸

And, while not specific to Philadelphia schools, in 2015, six school districts, parents, students, and advocates filed a lawsuit against the Pennsylvania Department of Education (“PDE”) and other state officials alleging that the way Pennsylvania funds public schools violates the Pennsylvania Constitution because students who live in low wealth districts are being deprived of the same opportunities and resources as students who reside in wealthier districts.⁷⁹ In February 2023, the Commonwealth Court declared Pennsylvania’s school funding system unconstitutional.⁸⁰

3. *The District’s Financial Crisis*

In Philadelphia, the fiscal crisis reached a breaking point in 1998. In 1998, then-superintendent David Hornbeck threatened to shut down District schools if the Commonwealth did not provide adequate funding.⁸¹ Concurrently, the Commonwealth passed Act 46, which granted the Secretary of Education the authority to declare a school district “financially distressed,” which would permit

⁷⁵ *Marerro I*, 709 A.2d at 966–67.

⁷⁶ *Marrero v. Commonwealth*, 739 A.2d 110 (Pa. 1999) (“*Marerro II*”).

⁷⁷ *Powell v. Ridge*, No. 98-1223, 1998 U.S. Dist. LEXIS 22328, at *4–6 (E.D. Pa. Nov. 18, 1998). Plaintiffs named four defendants: Thomas Ridge (Governor), Dr. James Gallagher (Chairperson of the Pennsylvania Board of Education), Dr. Eugene Hickok (Secretary of Education), and Barbara Hafer (State Treasurer). *Id.* at *4 n.2. On June 3, 1998, two senators (Robert Jubelirer and James Rhoades) and two state representatives (Matthew Ryan and Jess Stairs) joined the lawsuit as defendants via an uncontested motion to intervene. *Id.* at *7 n.3. Specifically, the plaintiffs asserted claims pursuant Title VI of the Civil Rights Act of 1964 and Section 1983 of the Civil Rights Act of 1871. *Id.*

⁷⁸ *Powell et al. v. Ridge et al.*, No. 98-1223, Dkt. No. 105 (E.D. Pa. Dec. 12, 2001); The court ultimately dismissed the case without prejudice in October 2005. *Powell et al. v. Ridge et al.*, No. 98-1223, Dkt. No. 113 (E.D. Pa. Oct. 28, 2005).

⁷⁹ *William Penn Sch. Dist. v. Pa. Dep’t of Educ.*, 2023 Pa. Commw. LEXIS 41, at *3 (Commw. Ct. Feb. 7, 2023).

⁸⁰ *Id.* at *1092–93.

⁸¹ Chrystal D. LaRoche, *Pennsylvania’s Act 46: Aimed at Improving Education or Punishing Educators?*, 5 J. BUS. L 611, 619 (2003).

the Commonwealth to take over a school district.⁸² Under the Act, a school district was considered in financial distress if its budget was insufficient to keep all of its schools open for a school year, or if its educational program was noncompliant with the Commonwealth's School Code.⁸³ A Commonwealth takeover would, in effect, legally dissolve the power of the local school board and permit the Commonwealth to establish a School Reform Commission ("SRC").⁸⁴ In 2000, the passage of the Education Empowerment Act provided the Commonwealth with even more authority to take over academically failing school districts by mandating that school districts improve their standardized test scores by a certain amount.⁸⁵ Subsequently, the District was placed on a list of eleven school districts that would be taken over by the Commonwealth if its Pennsylvania System of School Assessment ("PSSA") scores failed to improve.⁸⁶

4. *The Development of the School Reform Commission*

On December 21, 2001, pursuant to Act 46 and the Education Empowerment Act, Pennsylvania's Secretary of Education declared the District "financially distressed."⁸⁷ The Secretary of Education cited the District's failure to adopt a valid budget and provide educational programming in compliance with the Commonwealth's standards.⁸⁸ As a result, and citing the District's continued poor academic performance and financial distress, the Commonwealth announced that it would take over the District.⁸⁹ The Commonwealth's plan also involved privatization of some of Philadelphia's public schools, as suggested by Edison Schools, Inc., a for-profit education management company.⁹⁰ The Commonwealth engaged Edison (without a bidding process) and paid Edison \$2.7 million to evaluate the District's condition and consult with the Commonwealth regarding its anticipated takeover of the District.⁹¹ Two months after its engagement, Edison

⁸² *Id.* at 619; *see also* 24 P.S. § 6-696(a).

⁸³ LaRoche, *supra* note 81, at 619–20; *see also* 24 P.S. §§ 6-691(c).

⁸⁴ *Id.*; *see also* 24 P.S. § 6-696.

⁸⁵ Travers, *supra* note 70, at 1–2; *see also* 24 P.S. § 17-1701-B *et al.*

⁸⁶ Travers, *supra* note 70, at 1–2.

⁸⁷ *Presentation to the SRC* (Oct. 19, 2017), https://www.philasd.org/schoolboard/wp-content/uploads/sites/884/2017/07/101917_Presentations.pdf; 24 P.S. § 6-696.

⁸⁸ *Presentation to the SRC* (Oct. 19, 2017), https://www.philasd.org/schoolboard/wp-content/uploads/sites/884/2017/07/101917_Presentations.pdf; 24 P.S. § 6-696.

⁸⁹ *Presentation to the SRC* (Oct. 19, 2017), https://www.philasd.org/schoolboard/wp-content/uploads/sites/884/2017/07/101917_Presentations.pdf; 24 P.S. § 6-696.

⁹⁰ Jacques Steinberg, *In Largest School's Takeover, State Will Run Philadelphia's*, N.Y. TIMES (Dec. 22, 2001), <https://www.nytimes.com/2001/12/22/us/in-largest-schools-takeover-state-will-run-philadelphia-s.html>; Travers, *supra* note 70, at 2.

⁹¹ Robert P. Case, *A Performance Audit of the Pennsylvania Department of Education's Contract with Edison Schools, Inc.* (Nov. 20, 2002), <https://nepc.colorado.edu/publication/performance-audit->

produced a report that, in relevant part, proposed the privatization of low-performing schools.⁹² Edison also recommended that the Commonwealth dissolve the Board of Education and institute the SRC.⁹³

The Commonwealth created the SRC in December 2001 to oversee schools within the District.⁹⁴ The five-member commission had the authority to appoint a CEO who would function as a superintendent for the District.⁹⁵ The creation of the SRC was contentious; it was later described by some as “a massive experiment on black and brown and immigrant children.”⁹⁶ The decision to create an SRC faced scrutiny for not only removing local control over the District by removing the Board of Education, but also for privatizing some public schools in the city.⁹⁷ In doing so, many believed that it removed accountability to the public, including but not limited to, the city’s residents, students and educators.⁹⁸ As part of the city’s negotiation of the terms of the takeover with the Commonwealth, however, then-Mayor John Street and then-Governor Mark Schweiker agreed that Mayor Street would appoint two members to the SRC, while the Governor would appoint three.⁹⁹ These individuals were each appointed to serve a multi-year term, ranging from three to seven years.¹⁰⁰ Between 2001 and 2018, the SRC, which was composed of five members

[pennsylvania-department-educations-contract-edison-schools-inc](#); see also Steinberg, *supra* note 90; Travers, *supra* note 70, at 2.

⁹² Travers, *supra* note 70, at 2.

⁹³ Steinberg, *supra* note 90; Travers, *supra* note 70, at 1–2.

⁹⁴ SRC, *SRC Public Meeting Resolution List 2* (Nov. 16 2017), <https://www.philasd.org/src/wp-content/uploads/sites/80/2017/06/SRC-Resolution-Summary-11.16.17-Post-1.pdf>.

⁹⁵ Travers, *supra* note 70, at 2.

⁹⁶ Avi Wolfman-Arent & Dale Mezzacappa, *SRC makes Philly education history, votes to dissolve*, WHYY (Nov. 16, 2017) <https://whyy.org/articles/src-makes-philly-education-history-votes-dissolve/>.

⁹⁷ *Id.*

⁹⁸ See generally Greg Windle, *SRC Votes to Dissolve, Taking First Step Toward Local Control of Schools*, CHALKBEAT PHILA. (Nov. 16, 2017) <https://philadelphia.chalkbeat.org/2017/11/16/22186912/historic-day-philadelphia-regains-control-of-its-schools>.

⁹⁹ [REDACTED]

¹⁰⁰ Per Act 83 (2001), the terms for SRC members would be as follows:

- (b) Membership of the School Reform Commission shall be as follows:
 - (1) Members appointed pursuant to this section shall serve terms as follows:
 - (i) Two of the members appointed by the Governor shall serve initial terms of seven (7) years.
 - (ii) One of the members appointed by the Governor shall serve an initial term of five (5) years.

appointed by the Governor and the Mayor, oversaw the policies, operations, and finances of the District.¹⁰¹

Based on various factors, including both the District's academic and financial improvements from 2001 to 2017, the SRC elected to dissolve itself in November 2017 and return control of the District to Philadelphia the following year, in July 2018.¹⁰² In 2018, Mayor Jim Kenney appointed a nine-member Board of Education to replace the SRC.¹⁰³ The Board of Education was, until recently, led by former SRC chair, Joyce Wilkerson.¹⁰⁴ The Board of Education, which oversees the operations of the District,¹⁰⁵ is currently led by its President Reginald Streater.¹⁰⁶

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- (iii) One of the members appointed by the Governor shall serve an initial term of three (3) years. Upon the expiration of the initial term of this member, the mayor shall appoint an individual to fill this position.
 - (iv) The member appointed by the mayor shall serve an initial term of three (3) years.
 - (v) After the expiration of each initial term:
 - (A) Members appointed by the Governor under subclauses (i) and (ii) shall be appointed for a term of five (5) years.
 - (B) Members appointed by the mayor under subclauses (iii) and (iv) shall be appointed for a term of four (4) years.

24 P.S. Educ. § 6-696; *see generally* Travers, *supra*, at 2.

¹⁰¹ *See generally* SRC, *SRC Public Meeting Resolution List 2* (Nov. 16 2017),

<https://www.philasd.org/src/wp-content/uploads/sites/80/2017/06/SRC-Resolution-Summary-11.16.17-Post-1.pdf>.

¹⁰² Wolfman-Arent & Mezzacappa, *supra* note 96.

¹⁰³ Kristen A. Graham, *Local control is here: New Philly school board holds first-ever meeting*, THE PHILA. INQUIRER (July 9, 2018), <https://www.inquirer.com/philly/education/new-philadelphia-school-board-first-meeting-local-control-20180709.html>.

¹⁰⁴ The Sch. Dist. of Phila., Board of Education: About Us, <https://www.philasd.org/schoolboard/aboutus/#board> (last visited June 13, 2023). Other members of the Board are Leticia Egea-Hinton, Sarah-Ashley Andrews, Julia Danzy, Chau Wing Lam, Mallory Fix-Lopez, Lisa Salley, Reginald L. Streater, and Cecilia Thompson.

¹⁰⁵ The Sch. Dist. of Phila., Board of Education, <https://www.philasd.org/schoolboard/> (last visited June 13, 2023). The Board of Education is composed of nine board members appointed by the Mayor.

¹⁰⁶ Kristen A. Graham, *Once, He Was Homeless. Now, He is Philadelphia's School Board President. Meet Reginald Streater*, THE PHILA. INQUIRER (Dec. 26, 2022), <https://www.inquirer.com/education/philadelphia-school-board-reginald-streater-president-20221226.html>. Joyce Wilkerson was the Board of Education President during the Relevant Time Period.

B. An Overview of Charter Schools

A charter school is an independently operated public school.¹⁰⁷ Ray Budde, an educator from New England, is generally credited with creating the concept of charter schools in the 1970s, when he proposed that teachers be granted charters – or contracts – from their local school boards that would allow them to operate a school, thus allowing them to explore different academic approaches and methodologies.¹⁰⁸ Budde’s proposal evolved into the concept of charter schools today – schools with the autonomy to function independently of a school district or board under a charter provided by the local school board.¹⁰⁹ The first charter school law in the United States was enacted in 1991 in Minnesota, followed by California in 1992.¹¹⁰ Thereafter, charter schools became widespread throughout the country. Today, 45 states, the District of Columbia and Puerto Rico all have charter school laws, which govern the manner in which charter schools may operate in those jurisdictions¹¹¹

1. Charter School Law in Pennsylvania

Pennsylvania enacted its Charter School Law in 1997.¹¹² The Charter School Law governs the establishment, operation, and renewal of charter schools in the Commonwealth.¹¹³ The Charter

¹⁰⁷ Pennsylvania Dep’t of Educ., Charter Schools, <https://www.education.pa.gov/Policy-Funding/BECS/Purdons/Pages/CharterSchools.aspx> (last visited Oct. 15, 2022).

¹⁰⁸ David Baugh et al., *Charter School Reform: Recommendations for Policy Makers* 3 (June 5, 2017), <https://www.pasa-net.org/Files/InformationReports/2017/CharterSchoolReform2017.pdf>.

¹⁰⁹ Pennsylvania Dep’t of Educ., Charter Schools, <https://www.education.pa.gov/Policy-Funding/BECS/Purdons/Pages/CharterSchools.aspx> (last visited Oct. 15, 2022).

¹¹⁰ Baugh et al., *supra* note 108, at 4.

¹¹¹ Charter School Authorizers by State, NACSA, <https://qualitycharters.org/state-policy/multiple-authorizers/list-of-charter-school-authorizers-by-state/>; 50-State Comparison: Charter School Policies, Education Commission of the States, [https://www.ecs.org/charter-school-policies/#:~:text=Currently%2C%2045%20states%20and%20the,Columbia%20have%20charter%20school%20laws](https://www.ecs.org/charter-school-policies/#:~:text=Currently%2C%2045%20states%20and%20the,Columbia%20have%20charter%20school%20laws;); Puerto Rico, National Alliance for Public Charter Schools, <https://data.publiccharters.org/state/puerto-rico/>. National Alliance for Public Charter Schools is a nonprofit organization “committed to advancing the charter school movement.”

¹¹² *Discovery Charter Sch. v. Sch. Dist. of Phila.*, 166 A.3d 304, 316 (2017) (citing 24 P.S. § 17-1702-A):

The Charter School Law was enacted that year for the stated purpose of creat[ing] and maintain[ing] schools that operate independently from the existing school district structure as a means to, *inter alia*, improve pupil learning and increase learning opportunities, encourage the use of different and innovative teaching methods, and provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system.

¹¹³ 24 P.S. § 17-1717-A, *et seq.*

School Law defines a “Charter School” as “an independent public school established and operated under a charter from the local board of school directors and in which students are enrolled or attend.”¹¹⁴ Under the law, a charter school “must be organized as a public, nonprofit corporation. Charters may not be granted to any for-profit entity.”¹¹⁵

Under the Charter School Law, “[a]n application to establish a charter school shall be submitted to the local board of school directors of the district where the charter school will be located,” and the school board will “hold at least one public hearing on the provisions of the charter application,” prior to “grant[ing] or deny[ing] the application.”¹¹⁶

An applicant for a new charter is evaluated on the following criteria:

- (i) The demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the public hearing . . .
- (ii) The capability of the charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the adopted charter.
- (iii) The extent to which the application considers the information requested in section 1719-A and conforms to the legislative intent outlined in section 1702-A.¹¹⁷
- (iv) The extent to which the charter school may serve as a model for other public schools.¹¹⁸

“When authorized, the charter is the legally binding agreement between the chartering school district and a charter school.”¹¹⁹ The Charter School Law does not authorize provisional, temporary, interim, or any other type of charters” and the initial charter term must be set for a

¹¹⁴ 24 P.S. § 17-1703-A.

¹¹⁵ *Id.*

¹¹⁶ 24 P.S. § 17-1717-A(c-e).

¹¹⁷ Section 1719-A outlines requirements for the contents of a charter school application, stating, for example, that an application must include the name of the proposed charter school, the grade or age levels served by the proposed charter school and the mission and education goals of the charter school. Section 1702-A describes the legislative intent of the Charter School Law.

¹¹⁸ 24 P.S. § 17-1717-A(e)(2).

¹¹⁹ Pennsylvania Dep’t of Educ., *Basic Educ. Circular: Charter Schools* (Mar. 31, 2020), <https://www.education.pa.gov/Policy-Funding/BECS/Purdons/Pages/CharterSchools.aspx>.

period of 3-5 years.¹²⁰ Any conditions incorporated into the charter must be “be consistent with the provisions of Charter School Law, and be mutually agreed upon.”¹²¹

Charter schools must submit annual reports to their chartering school district and the PDE’s Division of Charter Schools no later than August 1 of each year.¹²² Between July 1 and October 1 of the final year of a school’s charter, the charter school must notify its chartering school district if it will request a renewal of its charter, which is “typically accomplished by submitting a renewal application.”¹²³ “Before granting a renewal of a charter, the chartering school district must conduct a comprehensive review of the charter school.”¹²⁴

A school board may choose to revoke or not to renew a charter for any of the following reasons:

- (1) One or more material violations of any of the conditions, standards or procedures contained in the written charter. . . .
- (2) Failure to meet the requirements for student performance . . . or failure to meet any performance standard set forth in the written charter signed. . . .
- (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.¹²⁵

Alternatively, the school board may choose to renew a charter school for a five-year period.¹²⁶ In school districts that have a population of one million or more (known as a district of the first class)

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ 24 P.S. § 17-1729-A(a).

¹²⁶ Pennsylvania Dep’t of Educ., *Basic Educ. Circular: Charter Schools* (Mar. 31, 2020), <https://www.education.pa.gov/Policy-Funding/BECS/Purdons/Pages/CharterSchools.aspx>.

– *i.e.* Philadelphia¹²⁷ – the local school board may instead reauthorize a charter school for one year if “there is insufficient data to adequately assess a charter school’s academic performance, and [it] determines that an additional year of data would assist in its decision whether to renew the charter for a period of five years.”¹²⁸ The school board may also mutually agree upon conditions for reauthorization with the charter school.¹²⁹

The Charter School Law also established the State Charter School Appeal Board (“CAB”). By law, the CAB consists of the Secretary of Education and six (6) members who are appointed by the Governor and confirmed by the Pennsylvania Senate.¹³⁰ Although initial charter applications are submitted to local school districts, the CAB “is the administrative agency charged with exclusive review of an appeal of a local school board decision not to grant an application.”¹³¹ CAB may also hear appeals from: “(1) the failure of a local board of school directors to act on an application for a charter within the law’s timeline; and (2) appeals from the revocation or nonrenewal of a charter.”¹³² CAB, in turn, authors opinions to which school boards in the Commonwealth look for guidance in decision-making.¹³³ CAB decisions may be appealed to the Commonwealth Court and then ultimately to the Pennsylvania Supreme Court.¹³⁴

2. Charter Schools in the City of Philadelphia

After the Charter School Law was enacted in 1997, four charter schools were established that same year.¹³⁵ Today, Philadelphia is the home of the most charter schools in the Commonwealth with 83 charters schools currently operating in the city, serving 64,498 students – approximately a third

¹²⁷ Notably, the District is the only district of the first class in the Commonwealth.

¹²⁸ 24 P.S. § 17-1720-A; *see also* Pennsylvania Dep’t of Educ., *Basic Educ. Circular: Charter Schools* (Mar. 31, 2020), <https://www.education.pa.gov/Policy-Funding/BECS/Purdons/Pages/CharterSchools.aspx>.

¹²⁹ *Id.*

¹³⁰ 24 P.S. § 17-1721-A.

¹³¹ *Shenango Valley Reg’l Charter Sch. v. Hermitage Sch. Dist.*, 756 A.2d 1191, 1193 (Pa. Commw. Ct. 2000).

¹³² Pennsylvania Dep’t of Educ., *Basic Educ. Circular: Charter Schools* (Mar. 31, 2020), <https://www.education.pa.gov/Policy-Funding/BECS/Purdons/Pages/CharterSchools.aspx>.

¹³³ *See id.*

¹³⁴ *Id.*

¹³⁵ Ron Zimmer et al., *Evaluating the Performance of Philadelphia’s Charter Schools*, RAND EDUC. (March 2008), https://www.rand.org/content/dam/rand/pubs/working_papers/2008/RAND_WR550.pdf.

of Philadelphia’s student population.¹³⁶ The racial demographics of charter school students in Philadelphia are as follows:¹³⁷

RACE/ETHNICITY	PERCENTAGE OF STUDENT POPULATION - CHARTER	PERCENTAGE OF STUDENT POPULATION - DISTRICT
Black/African American	60%	51%
Hispanic/Latino	18%	23%
White	13%	13%
Asian	3%	7%
Multiracial/Other	5%	5%

Notably, one source of growth in the charter sector in Philadelphia was the Renaissance School Initiative, which the SRC launched in 2010.¹³⁸ Pursuant to this initiative, the District selected low-performing District schools “and shifted management to external charter providers while remaining neighborhood schools.”¹³⁹ The purpose of the initiative, which is still in place today, is to “ensure that all students have a great school close to where they live.”¹⁴⁰ Of the 83 charter schools in operation during the 2022-2023 school year, 18 were Renaissance Charter Schools.¹⁴¹

¹³⁶ The Sch. Dist. of Phila., Fast Facts (last updated Jan. 20, 2023), <https://www.philasd.org/fast-facts/> (last visited June 18, 2023). Pittsburgh, the second largest city in the Commonwealth, has twelve charter schools. See Pittsburgh Public Schools, Office of Charter Schools, <https://www.pghschools.org/charterschools> (last visited June 18, 2023). Alan Butkovitz, Office of the Phila. Controller, *Review of Charter School Oversight – Examination of Charter Schools Operated by Education Providers* (May 18, 2016), <https://controller.phila.gov/philadelphia-audits/review-of-charter-school-oversight-examination-of-charter-schools-operated-by-education-providers/> (“If Philadelphia’s charter schools were considered a separate school district, it would be the state’s second largest, ahead of Pittsburgh, which has 54 schools and an enrollment of 25,000 students.”).

¹³⁷ The Sch. Dist. of Phila., Demographic characteristics of students attending District and Charter Schools, 2018-19 (Mar. 2019), <https://www.philasd.org/research/wp-content/uploads/sites/90/2019/03/Demographic-Characteristics-of-Students-2018-19-Data-Brief-March-2019.pdf>.

¹³⁸ Kati Stratos, Tonya Wolford, & Adrienne Reitano, *Philadelphia’s Renaissance Schools Initiative after Four Years*, 12:1 PENN GSE PERSPECTIVES ON URBAN EDUC. 1 (Spring 2015), <https://files.eric.ed.gov/fulltext/EJ1056675.pdf>.

¹³⁹ *Id.*

¹⁴⁰ The Sch. Dist. of Phila., Renaissance Schools (last updated Dec. 15, 2022), <https://www.philasd.org/charterschools/renaissance/> (last visited June 23, 2023).

¹⁴¹ *Id.* These schools are: Bluford Charter School; Global Leadership Academy at Huey; Lindley Academy Charter School at Birney; Mastery Charter School at Cleveland; Mastery Charter School at Clymer; Mastery Charter School at Douglass; Mastery Charter School at Gratz; Mastery Charter

3. *The Charter Schools Office*

Pursuant to the Charter School Law, the Board of Education is the entity responsible for evaluating both new charter applications¹⁴² and charter renewal applications.¹⁴³ In fulfilling these tasks, the Board of Education and the SRC have, consistent with the Charter School Law, delegated some of its responsibilities to the Charter Schools Office (“CSO”).¹⁴⁴ The CSO was created “as the office at the District to monitor charter schools to support the Board’s charter authorizing responsibilities and duties effectively and efficiently.”¹⁴⁵ The CSO coordinates with the District on “charter school student enrollment, special education, transportation, use of District facilities, food services, and payments.”¹⁴⁶ The CSO supports the Board of Education in its role as the charter school authorizer by: establishing “standards for charter school academic, operational, and financial performance”; processing new charter applications; “conducting ongoing performance evaluation and compliance monitoring”; and utilizing evaluation data “to make renewal, amendment, nonrenewal, and revocation recommendations to the Board[.]”¹⁴⁷ The CSO, however, does not have the authority

School at Harrity Elementary; Mastery Charter School at Mann; Mastery Charter School at Pastorius-Richardson Elementary; Mastery Charter School at Smedley; Mastery Charter School at Wister; Memphis Street Academy at J.P. Jones; The Philadelphia CS for the Arts & Sciences at H.R. Edmunds; Universal Charter School at Alcorn; Universal Charter School at Audenried; Universal Charter School at Creighton; and Universal Charter School at Vare. The Sch. Dist. of Phila., Renaissance Schools (2022-23)
<https://drive.google.com/file/d/1DNvkynbUJ0CVKKnEFo1KiIGb783cauZb/view>.

¹⁴² 24 P.S. §§ 17-1717-A.

¹⁴³ 24 P.S. §17-1729-A.

¹⁴⁴ The Sch. Dist. of Phila., Charter Schools Office, About Us, <https://www.philasd.org/charterschools/test-about-us/> (last visited June 13, 2023).

¹⁴⁵ The Sch. Dist. of Phila., Policy 400, Charter School Monitoring Structures at 2 (adopted Nov. 19, 2020), <https://www.philasd.org/schoolboard/wp-content/uploads/sites/892/2020/11/400-DRAFT-Clean.pdf>.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*; see also The Sch. Dist. of Phila., Policy 401, Charter School Authorizing Functions (adopted Nov. 19, 2020):

The CSO shall use the charter school performance framework to annually monitor charter school performance and evaluate performance during the charter term and when a charter school applies for charter renewal. Annually, the CSO shall issue charter evaluation reports that assess each charter school’s performance against the charter school performance framework standards. Reports will be published on the School District website annually.

to authorize or grant or deny a renewal application. Rather, pursuant to the Charter School Law, this authority lies solely with the Board of Education.¹⁴⁸

In addition to supporting the Board of Education in its role as the authorizer, the CSO serves to provide operational support to both charter schools and the Board of Education, by: “responding to charter sector inquiries in a timely manner”; “assisting with operational functions per the relevant charter agreement”; “providing information about the authorizing policies and procedures; and “providing compliance-related technical assistance, such as professional development, to charter schools boards and leaders at a reasonable fee as CSO capacity allows in cooperation with charter schools.”¹⁴⁹

Further, the CSO seeks to serve as a resource to families by helping them to “make informed decisions about charter school options . . . [and] monitors performance and promotes high standards in Philadelphia’s charter schools while preserving charter school autonomy and protecting the rights of students and families.”¹⁵⁰

C. The African American Charter School Coalition (“AACSC”)

1. Background on the AACSC

In 2019, several¹⁵¹ Black-founded and -led charter schools in Philadelphia formed the African American Charter School Coalition (“AACSC”).¹⁵² The AACSC currently consists of Black-founded and -led public charter school leaders and parents “with the purpose of ending systemic bias and racism in public education and, specifically, doing that by creating a non-bias [sic] system of charter oversight, renewal, and expansion.”¹⁵³ Per the AACSC’s website, the coalition represents “over 5000 children and families” from across the city.¹⁵⁴ Their stated mission “is

¹⁴⁸ 24 P.S. §§ 17-1717-A, 17-1720-A, 17-1728-A, 17-1729-A.

¹⁴⁹ The Sch. Dist. of Phila., Policy 400, Charter School Monitoring Structures at 3 (adopted Nov. 19, 2020).

¹⁵⁰ The Sch. Dist. of Phila., Charter Schools Office, <https://www.philasd.org/charterschools/> (last visited June 13, 2023); *see also* The Sch. Dist. of Phila., Renewal <https://www.philasd.org/charterschools/renewal/> (last visited June 18, 2023).

¹⁵¹ The AACSC does not make public its membership. Nor did the AACSC provide a list of its member schools to the Investigation Team.

¹⁵² Cherri Gregg, *Black-led charters launch ‘Black Schools Matter’ campaign to raise awareness about bias in Philly’s school system*, KYW NEWS (Nov. 25, 2020), <https://www.audacy.com/kywnewsradio/news/local/black-led-charters-launch-black-schools-matter-campaign>.

¹⁵³ AACSC, About Us <https://aacscpa.weebly.com/about-us.html> (last visited Feb. 1, 2023).

¹⁵⁴ *Id.* The AACSC website further states:

centered in addressing and reversing the discrimination and many inequities that exist between white and black-led schools in Philadelphia when it comes to renewal, expansions, philanthropic funding, resources, and support.”¹⁵⁵

In 2020, “the group launched the Black Schools Matter campaign to raise awareness about how the charter school system in Philadelphia and beyond treats white-led charters differently from Black-led ones.”¹⁵⁶ When the AACSC launched the campaign, the coalition stated, “Black charter schools in Philadelphia are more likely to face barriers to funding and expansion, and are more likely to close as a result.”¹⁵⁷ The group added that charter schools were essential in Philadelphia, where over 60% of students are Black, because “charter schools provide culturally competent education to kids who often come from low-income, working-class communities, which want the same access to high-quality education as higher-income communities in the city.”¹⁵⁸

During the virtual Black Schools Matter campaign launch in 2020, the AACSC stated that the campaign would “focus on getting Black-led charters recognized as necessities in Philadelphia; creating a non-biased system of charter oversight and renewal; revamping the district’s Charter Schools Office to increase transparency; and increasing funding opportunities for Black-led charter schools.”¹⁵⁹

In April 2021, the AACSC met with the Board of Education to discuss the concerns of AACSC member schools and to start a dialogue between the AACSC and the Board of Education. The day after the meeting, the AACSC wrote to the Board of Education to memorialize the conversation and specifically to request:

Our Coalition represents not only high quality and culturally focused educational programming and learning environments, but we also serve as economic engines for the communities we reside in. We also promote the social and emotional wellness and heritage of our diverse students celebrating their culture and Blackness. Despite doing all of this, there are still many inequities that exist between white and Black-led schools when it comes to funding, resources, and support.

A November 2022 AACSC PowerPoint Presentation provided to the Investigation Team, however, notes that the AACSC’s membership is much larger, stating that the AACSC represents individuals from twenty brick and mortar schools and approximately 15,000 students.

¹⁵⁵ AACSC, Find Out More <https://aacscpa.weebly.com/aacss.html> (last visited June 18, 2023, 2023).

¹⁵⁶ Cherri Gregg, *Black-led charters launch ‘Black Schools Matter’ campaign to raise awareness about bias in Philly’s school system*, KYW News (Nov. 25, 2020), <https://www.audacy.com/kywnewsradio/news/local/black-led-charters-launch-black-schools-matter-campaign>.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

- (1) That the District formally recognize the AACSC;
- (2) That “an independent investigation be conducted to determine if . . . biases and discriminatory practices exist[]” in “public charter oversight, renewal, and expansion opportunities[]”; and
- (3) For the District to work alongside the AACSC to prevent any further cuts to education spending in Philadelphia.¹⁶⁰

The AACSC’s second request, calling for an investigation of charter school authorizing, in part, led the Board of Education to decide to engage Ballard to conduct this Investigation.

2. *The AACSC’s August 2022 Recommendations to the Board*

On August 11, 2022, the AACSC issued “Recommendations to the Board of Education on the Charter Renewal Process.” There, the AACSC recommended:

1. School board members should hear directly from the school or allow them to present counter information to the board before a final decision is rendered to begin the non-renewal process.
2. There should be spot audits conducted to ensure the CSO’s information and evaluation is correct. The CSO should also have annual reviews.
3. The CSO should be required to inform schools of the recommendation for renewal or non-renewal prior to it being discussed and voted on during a public board meeting. This could be done by having a school sign a document indicating they were informed. There should be an exit interview, similar to that found in an audit process.
4. If the School District doesn’t meet its own deadlines, then all deadlines should be pushed back to accommodate new deadlines for both charter schools and the CSO.
5. The CSO should allow at least 2 weeks’ notice of status of renewal and they should agree to meet with schools prior to ACE-Reports and recommendations becoming public within that 2 week period.
6. The Board should see responses to the ACE Report as well as the school’s feedback to the report before they are finalized each

¹⁶⁰ Letter from AACSC to Joyce Wilkerson, former School Board President (Apr. 14, 2021).

year. The board should also read responses by the school before the report is finalized.

7. The Board should not appoint the mediator for the non-renewal hearing once a non-renewal is voted on. It should be an independent entity with no connection to the School District.

8. Schools should have independent, meaningful, and measurable performance objectives. These objectives should be school-specific, (school) community-specific, and developed in the first year of the charter term.

9. Schools should not receive the ACE-R report on a Friday and then the information be posted on a Monday with no opportunity to speak or meet in between.

10. Process for renewals of charters shouldn't change every year. The process should be the same with minor modifications and the people overseeing the renewal process need to have experience in evaluating schools.

11. Submissions made by charter schools to the CSO should not be repetitive and redundant and ACE Reports should not be issued in the same year that a school is doing a renewal.

12. The CSO needs to have better checks and balances and needs to be able to evaluate their own process the same way they evaluate the schools. A separate entity needs to evaluate their process each year same as they review the schools.¹⁶¹

In 2023, the Board of Education agreed to adopt some of the AACSC's recommendations. Specifically, the CSO agreed to adopt recommendations Nos. 4, 5, and 9, which CSO Employee #3 noted were consistent with the CSO's existing practices.

IV. THE INVESTIGATION'S FINDINGS

A. The District Had Concerns Regarding Authorizing Practices as Early as 2017

Throughout the course of the Investigation, several charter school leaders explained that their relationship with the CSO generally changed around 2015, when the CSO's leadership changed. And, although this Investigation was launched in 2021 in response to concerns the AACSC raised, a review of documents demonstrated that the District and SRC were aware of racial disparities in charter authorizing outcomes by late 2017.

¹⁶¹ AACSC, *Recommendations to the Board of Education on the Charter Renewal Process* (Aug. 22, 2022).

1. Charter Leaders Reported a Change in Their Relationship with the CSO Around 2015

The Investigation revealed that the relationship between some Black charter school leaders and the CSO was not always as antagonistic as some describe it to be today. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



2. The CSO and SRC's 2018 Response to Concerns about Racial Bias in Authorizing Practices

Throughout the course of the Investigation, the Investigation Team asked individuals interviewed from both the CSO and the SRC/Board of Education whether they were aware of the race of charter school leaders. When CSO Employee #1 was asked, they specifically stated that they did not know the race of any charter leader unless the charter leader self-disclosed it. According to CSO Employee #1, because most charter school leaders had not disclosed their race, CSO Employee #1 was unaware of the race of the majority of charter school leaders. CSO Employee #1 insisted that they do not assume the race of anyone they interact with unless and until the individual states their race.

The Investigation's document review demonstrated, however, that at least in 2018, CSO Employee #1 had made an effort to identify the races of charter school leaders. In or around March 14, 2018, CSO Employee #1 created a chart that identified twelve charter schools that closed as a result of SRC action from 2007 through 2017. The chart identified in the last column whether the school had a "School Leader of Color (at time of SRC action)." The document stated, "School Leader of Color" as "African-American/Black or Hispanic/Latino and is based on a known identification as such by the individual or District identification of the individual's race/ethnicity. This information is not verified by any data source because race/ethnicity of charter school leaders is not public data." The chart then identified that out of twelve schools listed, eight had a "school leader of color," meaning either a "board chair" or "school leader." The relevant text of the CSO-created chart reads as follows:

SRC Actions to Nonrenew or Revoke Charters Since 2001			
Charter School Name	Year/Actions	CMO	School Leader of Color ⁽¹⁾ (at time of SRC action)
Germantown Settlement Charter School	2008 Nonrenewed; closed*		Board Chair and school leader
Renaissance Charter School	2008 Nonrenewed, closed*		School leader
Community Academy Charter School	2013 Nonrenewed/revoked; CAB reversed		
HOPE Charter School	2012 Notice of Nonrenewal; surrendered charter		
Walter D. Palmer Leadership Learning Partners Charter School	2014 Nonrenewed; closed		Board Chair/school leader
Truebright Science Academy Charter School	2015 Nonrenewed; closed*	Gulen-affiliated	



ARISE Academy Charter School	2015 Nonrenewed; surrendered charter		
Imani Education Circle Charter School	2016 Nonrenewed; closed*		Board Chair and school leader
New Media Technology Charter School	2016 Nonrenewed; surrendered charter		Board Chair and school leader
Delaware Valley Charter High School	2017 Nonrenewed; closed*		Board Chair
World Communications Charter School	2017 Notice of Revocation; surrendered charter		Board Chair and school leader
Khepera Charter School	2017 Nonrenewed; appeal in process*		Board Chair and school leader

*The charter school appealed the nonrenewal/revocation to Charter Appeal Board (CAB).

A review of the documents suggests that the chart was requested by Board of Education Member #1 in December 2017. The document review also revealed that an agenda for a March 15, 2018 SRC executive session meeting included a briefing on minority-led schools, and that on March 15, 2018, CSO Employee #1 sent the document to the SRC's then Chief of Staff.¹⁶³ In that email, CSO Employee #1 wrote "I created and revised this document . . . and have reconfirmed all entries in the attached and although the information sourcing may not be verifiable, the attached is now accurate based on the information I have available." The email transmitting the chart also indicates that a version of the document had been reviewed earlier that day with the SRC during an executive session. Thus, in March 2018 CSO Employee #1 created documents regarding the race of charter school leaders for use during executive sessions of the SRC. The document shows that CSO Employee #1 was aware or became aware of the race of certain charter school leaders around this time.

When asked about this chart, CSO Employee #1 indicated that although they recalled creating this chart during their first two interviews, they did not mention the chart to the Investigation Team because they were not asked *specifically* about the chart. CSO Employee #1 reported that they and other CSO employees created the chart. They reported that the CSO "was asked to the best of their abilities" to try to determine whether they knew the school leader's race. But, CSO Employee #1 could not recall which Commissioner from the SRC requested that they create the chart or why the request was made. In fact, according to CSO Employee #1, they never learned why the chart was requested or for what purpose. CSO Employee #1 also reported that they did not speak about the chart with anyone at the CSO or SRC (other than working to compile the information and sending it to the SRC). The information provided by the District to the Investigation Team never revealed the ultimate purpose of the chart, nor why an SRC Commissioner requested it. CSO

¹⁶³ The Investigation Team also interviewed District Employee #2 who received a version of the chart. Although this individual acknowledged that it was sent to them, they did not remember receiving it, the purpose for which the chart was created, or who requested its creation. They did speculate, however, that the chart was created at an SRC Commissioner's request.

Employee #1 reported that they did not use the chart as a basis for any initiatives or for evaluating the processes used to evaluate charter schools.

Second, the document review also demonstrated that in March 2018, the CSO created a “minority-led charters focus group.” When shown an email in which they provided input on which schools should be included in the focus group, CSO Employee #1 said that the focus group was created in light of several charter schools facing possible nonrenewal, including Khepera Charter School and Eastern University Academy Charter School. The focus group was meant to inform potential changes to the evaluation framework. CSO Employee #1 did not have reason to believe that the focus group did not occur, but they said they could not be sure as they were not the group’s facilitator.

Thus, the Investigation revealed that at least as early as December 2017, the SRC and the CSO were considering the race of school leaders when evaluating authorizing decisions that the SRC had made in Philadelphia over the prior ten years. The Investigation also suggests that at least six years ago (2017), there was an awareness among SRC members and the CSO of the concerns that led in large part to this Investigation – namely, data showing that Black and minority-led charter schools were subject to closure in higher numbers. Yet, there is no evidence that either the SRC or the CSO made concerted efforts to address these concerns at that time. Indeed, those interviewed – including CSO Employee #1 – largely denied that there were any concerns about these issues until the AACSC raised them recently.¹⁶⁴

However, former SRC members who served during CSO Employee #1’s tenure had mixed recollections of allegations of bias by the charter sector. Three former SRC commissioners denied knowledge of allegations that Black-led charters were disproportionately closed. One SRC Member, SRC Member #3, reported that they recalled the CSO convening a meeting of charter schools to address allegations of racial bias. This SRC member also recalled that a Black charter leader made a public comment raising allegations of bias, including that Black-led schools were subject to greater scrutiny by the CSO. After the implementation of the current evaluation Framework,¹⁶⁵ SRC Member #4 recalled hearing allegations from two charter school leaders that the CSO treated Black- and Latino-led charters worse than White-led charter schools. SRC Member #1 reported that they had raised concerns about the number of Black-led schools slated for closure.

¹⁶⁴ See also *infra* Part IV.B.1 (describing efforts to improve communication around evaluations to benefit independent and minority-led schools, which would have been developed and implemented after the former charter leader’s tenure).

¹⁶⁵ The CSO adopted the current evaluation framework during CSO Employee #1’s tenure. Sch. Dist. of Phila, Charter Schools Office, Evaluation, <https://www.philasd.org/charterschools/evaluation/> (“In 2018, the CSO released an updated Charter School Performance Framework, based on charter sector feedback, research, and national standards for charter authorizing.”). More schools have been closed under the new framework regime than prior to the framework. See 2018 CSO School Leader Chart, *supra*. Most of the closed schools have been led by a person of color.

3. The CSO Looked Again Into the Number of Closures of Charter Schools Led by Leaders of Color in 2019 and Presented Its Findings to the Board

In late 2018 or early 2019, a CSO staffer created a slide deck titled “Minority Led Charter Schools Briefing.”¹⁶⁶ In the presentation, the CSO focused on a few major points: the Board of Education and CSO’s focus on quality; an overview of closed schools; context on those closures; an overview of current CSO initiatives; and an overview of the evaluation framework. In Slide #5, the presentation provides “National Context on School Closures,” and explains that “[r]esearch demonstrates that the primary reason charter schools close is related to financial deficiencies, mainly driven by low student enrollment or inequitable funding.” The presentation continued “[n]ationwide, charter school laws do not ensure equitable funding or facilities help[,]” but that “[t]his is often not the case for networks that are generously funded by philanthropy or philanthropy-backed funds.” Importantly, the slide highlights that 90% percent of charters that fail because of financial reasons are independent, grassroots startups” and “[a]ll charter schools that have closed in Philadelphia were independently operated.”¹⁶⁷ Finally, the slide concludes that “[m]any charter schools led by Black and Latino CEOs are independently operated.” The following slides, reproduced below, show charter school closures, surrender clauses, and pending nonrenewals with information about the minority-status of school leaders.

Recent Philadelphia Charter School Closures

Charter School	Year Closed	Minority-Led	Primary
Walter D Palmer Leadership Academy Charter School	2014-15 (Dec)	✓	Financial distress
Wakisha Charter School	2014-15 (Dec)	✓	Financial distress
Arise Charter School	2014-15	X	Nonrenewal
True Bright Leadership Academy	2014-15	X	Nonrenewal
Imani Education Circle Charter School	2015-16	✓	Nonrenewal**
New Media Technology Charter School	2015-16	✓	Nonrenewal/Surrender**
Young Scholars Kenderton Charter School (Ren)	2015-16	X	Surrender
World Communications Charter School	2016-17	✓	Surrender/Academic
Delaware Valley Charter School	2016-17	X	Nonrenewal
Khepera Charter School	2018-19*	✓	Revocation**

In the past five years, 10 charter schools have closed or are anticipated to close, six of which were minority-led, defined as led by a Black and Latino CEO at the time of closure. **Of those, three closures were the direct result of action taken by the CSO (non-renewal/revocation) due to academic performance and/or financial distress.

*Khepera Charter School is anticipated to close at the end of the 2018-19 school year.

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¹⁶⁶ The slide deck is dated March 29, 2019, but the Investigation Team was not able to determine if that is the date on which the presentation was given to the Board of Education.

¹⁶⁷ CSO Employee #3 disagreed that all charter schools that have closed in Philadelphia were independently operated. They noted that at the time of the presentation, some closed schools were operated by a CMO, including Young Scholars Kenderton Charter School.

Charter Schools with Surrender Agreements

Charter School	Non-Renewal Recommendation Year	Minority-Led	Status
Richard Allen Preparatory Charter School	2015	✓	Surrender agreement with academic targets
Universal Charter School at Bluford	2015	✓	Surrender agreement with academic targets; School successfully met target
Universal Charter School at Vare	2016	✓	Surrender agreement with academic targets
Memphis Street Academy Charter School at J.P. Jones	2017	X	Surrender agreement with academic targets

In recent years, the CSO has made efforts to use surrender agreements as an intervention method to drive quality improvements. Four (4) charter schools that were previously recommended for non-renewal have executed surrender agreements with academic targets, three of which were minority-led.

Pending Non-Renewals

Charter School	Recommendation Year	Minority-Led	Status
Eastern University Charter School	2017	✓	Non-renewal currently under review with Charter Appeals Board (CAB)
ASPIRA Olney	2016	✓	Local non-renewal hearings currently in session
ASPIRA Stetson	2016	✓	Local non-renewal hearings currently in session
Universal Charter School at Audenried	2016	✓	Non-renewal recommended by the CSO due to academic performance and financial health & sustainability
Charter High School for Architecture and Design (CHAD)	2016	X	Local non-renewal hearings pending scheduling

Currently, five (5) charter schools are pending non-renewal. Of those, four (4) are minority-led, as defined by having a Black or Latino CEO at the time of recommendation.

The slide immediately following the three reproduced above, Slide #9, attempts to provide context on school closures, noting that 60% of the charter schools that had closed in five years prior had been minority-led, and three of those closures were the “direct result of action taken by the CSO.” The slide explains that while the primary driver of school closures is academic performance, almost all closed schools had significant financial health concerns. The slide further highlighted that school closures without authorizer action are often due to financial issues, but that “there is not a dedicated non-profit charter support organization in Philadelphia, unlike in other major cities, to provide technical assistance and guidance to charter schools.”

Slide #10 is dedicated to CSO Initiatives to “address inequities in our systems.” Those initiatives were: (1) “[d]eveloping and implementing a charter school performance framework that acknowledges and accounts for demographic differences in schools; (2) “[p]roducing transparent guides and annual evaluation reports that explicitly outline how schools are being held accountable”; (3) “[u]tilizing notices of deficiency throughout the charter term to inform schools on areas they must improve prior to their renewal year”; (4) “[p]roviding resources and guidance

to level the playing field at convenings and via the monthly Newsletter”; and (5) “[b]uilding out a diverse CSO staff with varied expertise to increase engagement with school leaders.”

The Investigation Team asked CSO Employee #3 about these initiatives. Although CSO Employee #3 did not create these slides or present them, they were in the CSO at the time and familiar with CSO activities. CSO Employee #3 noted that the monthly Newsletter was a new development in 2019, but otherwise, none of the other initiatives on this slide was novel, and they existed in one form or another prior to 2019. However, CSO Employee #3 explained that all of these initiatives have grown stronger and more focused over time.

Around this time, CSO Employee #2 gave a presentation about Black-led charter schools to the Board of Education. The Investigation Team was not able to determine, however, whether the slide deck discussed above was the exact presentation that CSO Employee #2 presented to the Board of Education. A review of the documents revealed an internal memo from CSO Employee #2 to Board of Education Member #1 recounting the highlights from the presentation and the data on minority school closures. Additionally, on January 28, 2019, CSO Employee #3 took notes from a meeting with District Employee #2. In these notes, CSO Employee #3 appears to state that a City education official will “talk broadly” about “why minority operated charters are getting closed down fast[er] than non-[minority operated charter schools.]” The email also notes that “[t]he question is—have you taken a look at how the schools are doing.” And, it appears to include a request for the CSO to develop basic talking points on the issue for the Board of Education. A document (seemingly created on January 30, 2019 and edited by CSO Employee #3) lays out potential talking points about the closure of charter schools with “minority leadership.” The document highlights that the majority of closed schools had “minority leadership” and that at least six of the schools “sought to serve particularly unique missions/student bodies[.]” The document then states that “at no point has [the CSO’s] approach towards evaluation considered the backgrounds of school leaders or board chairs. At the core of authorizing is a focus on outcomes.” The document reiterates that financial health had been a prevailing early warning indicator and a reason for charter school closure. The document concludes by “fully acknowledg[ing] that all schools are unique and add value to the students and families they serve, regardless of the specific outcomes on a framework.”

In June 2019, media inquiries about this PowerPoint presentation sparked an internal discussion at the CSO about how to respond. In an email from a local reporter, the District was asked to comment on the slide deck, why the District decided to look at the topic, and whether CSO Employee #2 presented it to the Board of Education. In an email to CSO Employee #2, CSO Employee #3 stated:

It is true that schools led by people of color have closed in the last 5-10 years as a result of nonrenewal. It is also true that each of the schools that the CSO, and ultimately the SRC, nonrenewed were objectively underserving students academically and not complying with applicable laws.

There is a robust and potentially fruitful conversation that could occur regarding supports for schools led by people of color. While we would be eager to engage in this conversation, the CSO is not

yet at the point where we would be able to effectively and independently lead this dialogue. We would welcome the opportunity for an organization or school(s) to include us in this discussion.

This email, again, signifies that the CSO was aware of the concerns at the base of this Investigation. Yet despite this awareness, the District did not take any meaningful steps to remedy or investigate these concerns.

B. The Investigation Revealed Several Systemic Issues in Philadelphia’s Charter Renewal and Authorization Process

The Investigation revealed that the majority of concerns raised by Black-led charter schools (whom were interviewed) are connected to systemic problems in the District’s authorizing practices, rather than individualized, discrete acts of discrimination. These systemic problems tend to be race-neutral (*e.g.*, conflicts of interest) and affect all charter schools to some degree. However, they have a greater impact on Black-led charter schools because of certain unique challenges that some Black-led charter schools face. Thus, while the District has for years acknowledged internally that Black-led charter schools are closing because of certain unique challenges – which may be caused by forces external to the District (*e.g.*, burdens of some Black-led charter schools not being affiliated with a CMO) – the District has not engaged in any meaningful examination of its own practices (or inaction) that might be exacerbating the effects of those unique challenges. Nor has the District meaningfully examined how to assist proactively Black-led charter schools with overcoming those challenges.

1. *The Regulatory Structure of the Charter School System in Philadelphia Results in Inherent Conflicts of Interest*

Throughout the course of the Investigation, numerous individuals interviewed, both from within the charter sector as well as those associated with the District, raised concerns regarding the regulatory structure of the charter school system in Philadelphia. Specifically, these individuals cited the inherent conflict of interest that exists in a system where, pursuant to the Charter School Law, the Board of Education serves as the authorizing entity for charter schools, which compete with District-run schools not only for students, but also for funding.

In addition to the ways in which charter schools and District-run schools compete, the Board of Education has also delegated its day-to-day oversight of charter schools to the CSO. Thus, some interviewed – including CSO Employee #2 – noted that there is an inherent and potentially irreconcilable tension between the CSO serving as a quasi-regulator/evaluator and as a helpful resource to charter schools.

Lastly, some cited the conflicts of interest that arise when a charter school and the District are engaged in ongoing litigation, as well as the impact that the costs of potential litigation may have on the Board of Education’s authorizing decisions. We discuss each of these conflicts in turn.

(a) Pennsylvania’s Education Funding Framework

To best understand the financial interplay between the manner in which charter schools are funded and the District’s funding, one must understand the manner in which public education generally is funded in the Commonwealth. The District receives funding from several sources, including the federal government, the Commonwealth, and the City of Philadelphia.¹⁶⁸ In April 2022, the District published its Consolidated Budget for fiscal year 2022-2023 (the “Consolidated Budget”). The Consolidated Budget projects that in FY23,¹⁶⁹ the District will receive \$4.473 billion in total revenue while expending \$4.299 billion in total expenditures.¹⁷⁰ Thus, in the Consolidated Budget, the District identifies and projects the following revenue streams for FY23:¹⁷¹

REVENUE SOURCE	ESTIMATED AMOUNT FOR FY23
Local Tax Operating Revenues	\$1,413,000,000
Local Non-Tax Operating Revenues	\$289,500,000
Commonwealth Operating Revenues	\$2,198,000,000
Federal Operating Revenues	\$16,500,000
Federal Grant Relief Revenues	\$555,000,000
Other Financing Sources	\$1,800,000
<i>Projected Revenue Total</i>	\$4,473,800,000.00

The District also identifies and characterizes its projected expenditures for FY 2023 in the Consolidated Budget, as follows:

EXPENDITURE COMPONENT	EXPENDITURE AMOUNT FOR FY23
District-Operated Schools	\$2,291,000,000
Charter Schools (including transportation)	\$1,030,000,000

¹⁶⁸ The Sch. Dist. of Phila., *FY2022-23 Consolidated Budget* (April 2022) at 19–21, https://cdn.philasd.org/offices/budget/FY23_Consolidated_Budget_Book.pdf (last visited June 18, 2023).

¹⁶⁹ “The District’s fiscal year (FY) is from July 1st through June 30th. The budget year is associated with the end of the year, meaning that July 1, 2022 through June 30, 2023 is considered fiscal year 2023 (FY23).” The Sch. Dist. of Phila., *The School District of Philadelphia Principals’ Financial Training Guide 2022-2023*, 2 (2022), <https://www.philasd.org/accounting/wp-content/uploads/sites/125/2022/07/FY23-Principals-Financial-Training-Manual-.pdf>.

¹⁷⁰ The Sch. Dist. of Phila., *FY2022-23 Consolidated Budget* (April 2022) at 19, https://cdn.philasd.org/offices/budget/FY23_Consolidated_Budget_Book.pdf (last visited June 18, 2023).

¹⁷¹ *Id.* at 26.

Debt Service	\$372,100,000
Anticipated Expenditures Related to Governor's Proposed Budget	\$342,100,000
Other Non-District Schools (including transportation)	\$113,800,000
Administrative Support	\$168,800,000
Other Financing Uses	\$2,200,000
<i>Projected Expenditure Total</i>	\$4,320,000,000.00

Upon receiving funds from these sources, the District allocates funds to both District and charter schools.¹⁷² State law provides the formula by which each school – whether a District or charter school – receives funding.¹⁷³ These formulas – which are explained in Section 1725-A(a) of the Pennsylvania Public School Code – provide funding to charter schools on a per pupil basis and differ depending on whether a student has been qualified as a special education student.¹⁷⁴ For non-special education students, the charter school “shall receive” from the District “no less than the budgeted total expenditure per average daily membership of the prior school year” for each student enrolled, minus the budgeted expenditures of the District for various other expenses.¹⁷⁵ For special education students, the charter school “shall receive” for each student the same per-student amount as non-special education students, plus an additional amount determined by a separate statutory formula that accounts for the level of the District’s expenditures on special education students.¹⁷⁶ For fiscal year 2023, the standard per pupil amount that was provided to charter schools was \$9,395, whereas the amount per special education student was \$31,494.¹⁷⁷

Under this per-pupil funding system, the funds follow the student. Therefore, should a student move from a District school to a charter school, so, too, would the funds. Likewise, funds allocated to a charter school are redirected to the District if the student were to enroll in a District school from a charter school.

Because the amount of funding the District provides to charter schools in Philadelphia varies depending upon enrollment, the aggregate amount paid to charter schools varies year-over-year.

¹⁷² *Id.* at 22–26.

¹⁷³ Public School Code of 1949, 24 P.S. § 1-101 *et seq.*, as amended.

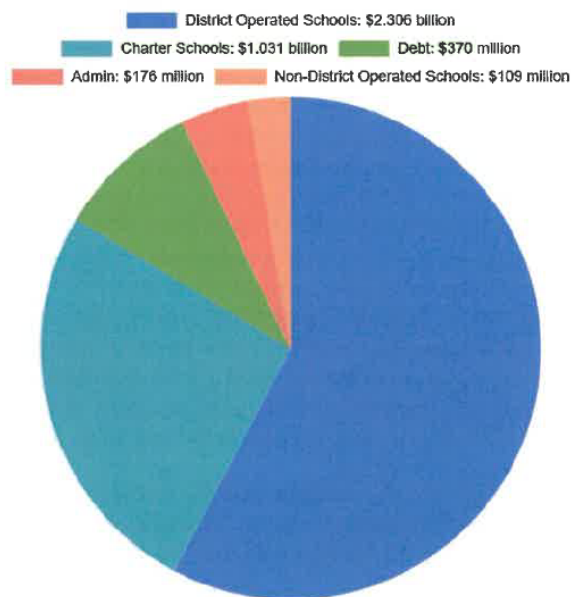
¹⁷⁴ *See* 24 P.S. § 1725-A(a)(2).

¹⁷⁵ *See* 24 P.S. § 1725-A(a)(2).

¹⁷⁶ *Id.* at §1725-A(a)(3).

¹⁷⁷ Pennsylvania Dep’t of Educ., Charter School Funding in Pennsylvania: “2022-23 rates based on PDE-363s received by PDE (Excel)”, <https://www.education.pa.gov/K-12/Charter%20Schools/Pages/Charter-School-Funding.aspx> (last visited Mar. 16, 2023).

Nonetheless, during the Relevant Time Period, enrollment in Philadelphia charter school has increased, while enrollment in District-run schools has decreased.¹⁷⁸ Accordingly, the proportion of the District’s budget allocated to charter schools has been and continues to be substantial. For example, in fiscal year 2023, the District estimates that its payments to charter schools will total \$1.03 billion, or approximately 31% of the District’s annual budget.¹⁷⁹ To put this number in perspective 32.7% of students enrolled in schools in the District are in charter schools.¹⁸⁰ The chart below illustrates the significant portion of the District’s budget that was allocated to charter schools for fiscal year 2023:¹⁸¹



¹⁷⁸ Compare Public School Enrollments 2010-2011, Pennsylvania Dep’t of Educ., <https://www.education.pa.gov/DataAndReporting/Enrollment/Pages/PublicSchEnrReports.aspx> to Public School Enrollments 2020-2021. See also The Sch. Dist. of Phila., Philadelphia Public School Enrollment, 2022-23, https://www.philasd.org/research/wp-content/uploads/sites/90/2023/02/Enrollment-2022-23-Research-Brief_February-2023.pdf (“Since the 2014-15 academic year, enrollment in District schools has decreased by 13%, and enrollment in Philadelphia Charter schools has increased by under 1%.”).

¹⁷⁹ The Sch. Dist. of Phila., Office of Management and Budget, Quick Budget Facts (July 28, 2022), <https://www.philasd.org/budget/budget-facts/quick-budget-facts/>.

¹⁸⁰ See The Sch. Dist. of Phila., Fast Facts (last updated Jan. 20, 2023), <https://www.philasd.org/fast-facts/> (last visited June 18, 2023).

¹⁸¹ The Sch. Dist. of Phila., Office of Management and Budget, Quick Budget Facts (July 28, 2022), <https://www.philasd.org/budget/budget-facts/quick-budget-facts/>.

While the amount of per-pupil funding for charter schools is set by statute, the Board of Education – as the charter school authorizer pursuant to the Charter School Law – has some control in how many students may enroll in brick and mortar charter schools in Philadelphia.¹⁸² The Board of Education does so in two ways. First, it determines the number of charter schools that operate in Philadelphia.¹⁸³ Second, to the extent a charter school agrees to an enrollment cap in its initial charter, the Board of Education negotiates the number of students who may enroll in each charter school.¹⁸⁴ Therefore, the Board of Education’s authorization, renewal, and expansion decisions are all inextricably intertwined with the District’s budget.

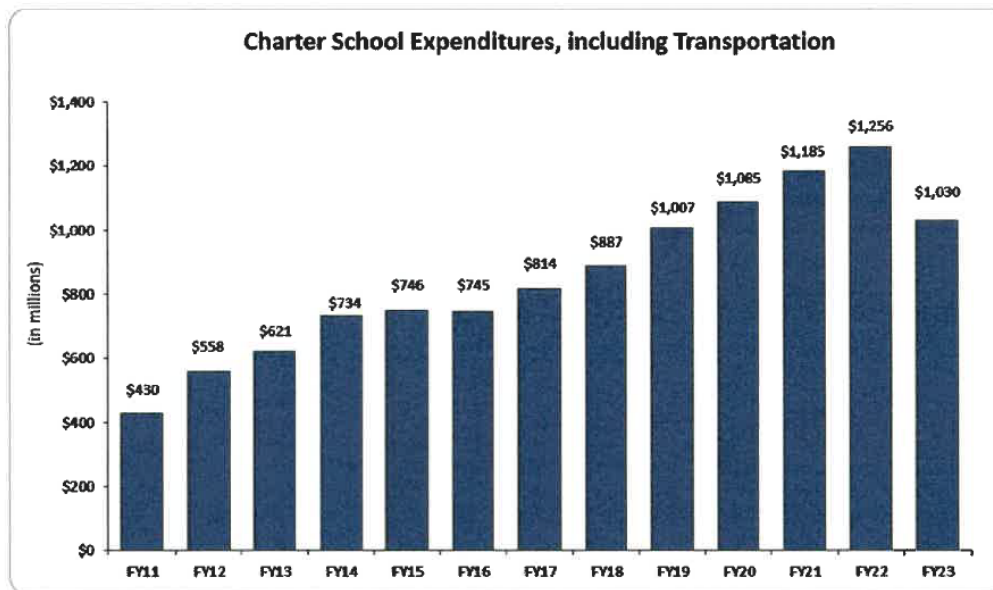
Notably, with the exception of fiscal year 2023, the District has seen that the financial impact of charter schools upon its budget increase over the years:¹⁸⁵

¹⁸² As noted *supra* Part II, this report only evaluates the Board’s actions with regard to brick and mortar charter schools. As such, it does not analyze or evaluate the impact, if any, of cyber charters schools upon the District’s budget. This is in large part because the Board of Education does not oversee cyber charter schools, but rather, cyber charter schools are governed by the Commonwealth. Pennsylvania Dep’t of Educ., *Cyber Charter School Operations and Proper Use of Physical Facilities*, <https://www.education.pa.gov/Policy-Funding/BECS/Purdons/Pages/CyberCharterFacilities.aspx> (last visited June 18, 2023). Moreover, cyber charter schools are not subject to enrollment caps. *See* 24 P.S. § 17-1723-A(d)(1) (“Enrollment of students in a charter school or cyber charter school shall not be subject to a cap[.]”).

¹⁸³ 24 P.S. §§ 17-1717-A, 17-1719-A, 17-1720-A, 17-1728-A, 17-1729-A.

¹⁸⁴ 24 P.S. § 17-1723-A.

¹⁸⁵ The Sch. Dist. of Phila., *FY2022-23 Consolidated Budget* at 24 (April 2022), https://cdn.philasd.org/offices/budget/FY23_Consolidated_Budget_Book.pdf (last visited June 18, 2023). FY23 costs were projected to go down based on the proposed budget. *Id.* Given that FY23 was outside of the Relevant Time Period, the Investigation did not inquire into the rationale for this projection.



As illustrated above, since fiscal year 2011, the District has seen payments to charter schools increase by 140%.¹⁸⁶ These increases, however, cannot be solely attributed to an increase in the number of students who have elected to attend charter schools in lieu of District-run schools. Rather, the increase is at least in part attributed to an increase in the per pupil rate the statute mandates.¹⁸⁷

(b) Because of the Manner in Which Charter Schools Are Funded in Pennsylvania, a Financial Conflict of Interest Exists When the Board of Education Makes Authorizing Decisions

Against this background, many interviewed from within the charter sector voiced a concern: because the District’s budget is directly and negatively impacted by the Board of Education’s decisions to authorize, renew, or grant an enrollment expansion to a charter school, the Board of Education is not incentivized to act in the interest of charter schools. And, the impact of the Board of Education’s decisions is not small: because so many Philadelphia students rely on charter schools for their education, approximately one-third of the District’s budget goes to charter schools. Individuals in the charter sector were acutely aware of the financial conflict of interest between the District and the charter sector. One Black charter school leader characterized the Board of Education’s role as authorizer as unfair. Several charter school leaders explained that

¹⁸⁶ *Id.*

¹⁸⁷ *Charter School Funding PowerPoint Presentation*, School District of Philadelphia (provided to Ballard August 1, 2022); 24 P.S. § 17-1725-A.

they believed that the CSO is not a partner to charter schools generally because the District views charter schools as taking money from its budget.

Notably, one former charter school leader stated that despite the District's concerns regarding the impact of charter schools on its budget, charter schools actually cost more to run than District-run schools because charter schools have more overhead costs associated with their operations than District-run schools.¹⁸⁸ Additionally, this charter school leader alleged that the District deducted from the per pupil allowance certain costs that the District incurred for services provided to charter schools, for example, student transportation. Another charter school leader similarly alleged that the District takes 30% of the per-pupil funding from the charter sector before it reaches their school. Overall, those interviewed cited this conflict of interest as a central reason for their mistrust in the authorization and renewal process, causing many to deduce that the Board of Education's decisions are biased because of the underlying competition between charter schools and the District both for funding and students.¹⁸⁹

The Charter Appeals Board ("CAB") has recognized this inherent tension, holding in several cases that the Charter School Law prohibits charter school authorizers in Pennsylvania – like the Board of Education – from considering the financial impact of chartering decisions on District schools when making charter authorizing decisions, like voting on new charter applications.¹⁹⁰ As one

¹⁸⁸ This is a complicated claim. Per a 2016 Report by the Pennsylvania School Boards Association, in Pennsylvania, a charter school's administrative expenditures are close to double those of traditional public schools. However, not all of the expenditures can be linked to instruction and support services. Rather, on average, charter schools pay their highest-ranking officials more than their equivalents in the public sector. And, the report found that charter schools on average actually spend less on instruction but more on support services and facilities. Pennsylvania School Boards Association, *PSBA SPECIAL REPORT: Charter School Revenues, Expenditures and Transparency* (August 2016), <https://www.psba.org/wp-content/uploads/2016/08/Charter-School-RtK-08172016.pdf>. It is worth noting that PSBA is an advocacy organization for school boards, *i.e.*, authorizers, and has advocated for increased regulation of charter schools, among other things.

¹⁸⁹ This concern was a common theme among interviewees from the charter sector, but the conflict was not connected directly to the race of the charter school's leader or founder.

¹⁹⁰ See *In re: Fell Charter Sch.*, CAB No. 2001-9, 7 (May 2, 2002), <https://tinyurl.com/mrm53r3p> ("The Charter School Law does not provide that financial impact should be a basis upon which an application should be evaluated. The legislature intended the criteria for evaluation to be educational in nature, and therefore, evaluating an application on the basis of financial considerations is improper."). However, one legal scholar has argued that the Charter School Law, contrary to these CAB holdings, permits districts to consider financial impacts when making chartering decisions. Susan L. DeJarnatt, *A Legal Mandate that Authorizers Consider Fiscal and Other Impacts of Charter School Expansion*, 121 W. VA. L. REV. 811, 814 (2019), <https://scholarshare.temple.edu/handle/20.500.12613/6639>.

CAB panel noted “it is well-settled that the financial impact on a school district is an improper basis for denying a charter application.”¹⁹¹

Thus, the Board of Education has an incentive to ensure that the District’s budget is as large as possible to guarantee adequate funding for traditional public schools, but is required to self-regulate and refrain from considering the obvious financial implications of its charter authorizing decisions. Interviews of former SRC members and former and current Board of Education members revealed that each of these individuals was aware of the financial impact of their charter authorizing decisions. SRC Member #4 commented that there were some SRC members who believed that charter schools financially impacted the District’s budget, whereas others did not believe that charter schools had a financial impact on the District. Yet, none of those interviewed denied that a decision to authorize, renew, or expand a charter school’s enrollment had an impact on the District’s budget. In fact, SRC Member #2 attributed the District’s financial distress that led, in large part, to the SRC’s formation to the amount of funding that was dedicated to charter schools. Similarly, SRC Member #6 reported that the amount of funding provided to charter schools was one of the three factors that led to the District’s financial crisis. This individual explained that because charters could enroll students from throughout the city, offsetting the loss of revenue was difficult for the District. For example, the District could not simply cut a program or eliminate a teacher or building to cut expenses.¹⁹² And, SRC Member #6 indicated that because the Charter School Law provides funding on a per pupil basis that is higher for students with increased special education needs, they believed that charter schools were receiving this additional funding for students whom they were incapable of servicing.¹⁹³

The Investigation revealed that District staff are also aware of and attempt to model the financial impact of the Board of Education’s chartering decisions. For example, every year the District conducts an analysis that “utilizes data from the Charter Schools Office, including all actions already taken by the Board regarding charter approvals, planned growth (grow a grade, eg [sic]), and closures, in order to project the enrollments at District schools and charter schools over the 5

¹⁹¹ *In re Chester Charter*, CAB No. 2012-02, 6 (July 25, 2012), <https://tinyurl.com/2i34end4> (citing *Keystone Cent. Sch. Dist. v. Sugar Valley Concerned Citizens*, 799 A.2d 209, 218 n.14 (Pa. Commw. Ct. 2002)).

¹⁹² *See id.*

¹⁹³ District Employee #1 described how, in their view, charter schools receive above-cost reimbursement to educate special education (“SPED”) students. This official explained that SPED students are divided into tiers based on the estimated cost of educating each tier. Tier 1 students require the least services and cost approximately \$20,000 annually to educate. Accordingly, the District spends approximately \$20,000 per year per Tier 1 SPED student enrolled in a District school. But, charter schools receive a rate of \$27,000 for each SPED student a charter school educates, regardless of the student’s tier. Because the base rate is \$7,000 higher than the true cost of educating Tier 1 students, the official reported that the charter schools receive a \$7,000 windfall from the District for each Tier 1 student enrolled.

year time period and the resulting fiscal impact.”¹⁹⁴ The District engages in this exercise as the impact – as noted by former SRC members and current and former members of the Board of Education – is not necessarily predictable. However, as Board of Education Member #1 noted, these “financial impacts” cannot ever be totally divorced from the authorizing decision because when a charter school closes, the District becomes responsible for the placement and education of those students. As such, despite the representations made by former SRC members and current and former members of the Board of Education, there is evidence that the District is not only keenly aware of the financial impact of the Board of Education’s authorizing decisions, but that these impacts are tracked closely.¹⁹⁵

Yet, all but two former SRC members interviewed stated that they did not consider how their authorizing decisions would impact the District financially.¹⁹⁶ SRC Member #1 recalled conversations amongst other members about reducing the number of charter schools “because of [the financial] drain” upon the District. SRC Member #6 said that, while they never considered the impact when choosing to close a charter school, they did consider the financial impact when deciding whether to grant a new charter. District Employee #2 explained that if questions about financial impacts were ever raised in an executive session of the Board of Education or the SRC, SRC commissioners/members of the Board of Education would be advised that financial impacts were not to be considered in authorizing decisions. Moreover, CSO Employee #4 indicated that the CSO’s role in the renewal process was to “simply evaluate[] inputs.” Those inputs – data regarding the charter school’s academic performance, governance, and financial health – do not capture or otherwise analyze the financial impact upon the District of a renewal decision.

In fact, SRC Member #2 explained that they did not consider the financial impact of their charter authorizing decisions upon the District and that doing so would be nearly impossible. This individual explained that even when the SRC closed a charter school, the impact upon the District’s budget could not always be clearly projected. SRC Member #2 explained that because the financial impact would be distributed against all District-run schools (assuming that some of the students did not elect to attend another charter school in lieu of returning to the District), the financial impact would be defused. Thus, SRC Member #2 rejected that idea that any of the District’s

¹⁹⁴ The same former District official also reported that, in 2017, the District performed an internal analysis of where students of charters schools slated for closure were likely to enroll post-closure. The District was unable to locate that analysis.

¹⁹⁵ See also The Sch. Dist. of Phila., *School District of Philadelphia Releases Report on the Stranded Costs of Charter Schools* (Mar. 9, 2017), <https://www.philasd.org/communications/2017/03/09/school-district-of-philadelphia-releases-report-on-the-stranded-costs-of-charter-schools/> (noting that it is “difficult for SDP to react and reduce its spending when students leave District-run schools” for charter schools).

¹⁹⁶ Many SRC and Board of Education members interviewed, however, reported experiencing political pressure to make certain authorizing decisions for reasons at least in part related to funding. This pressure, albeit in different directions, came from both sides of the aisle. Perhaps most dramatically, SRC Member #5 alleged that a Pennsylvania Governor removed them from their leadership position on the SRC in retaliation for their approval of new charter schools, a decision that SRC Member #5 stated was explicitly linked to the impact of charter schools on the District’s funding.

financial issues could have been solved through *ad-hoc* charter school closures. Board of Education Member #1 indicated that these financial implications remain true today. They explained that the loss of funding to the District that occurs when a student transfers to a charter school is often not offset by an equal reduction in cost. This is because District costs do not accrue on a per-student basis. For example, the cost to run a single classroom and pay a single teacher would be the same whether there were 22 or 20 students enrolled in a specific class. In other words, for the District to reduce its costs to match a reduction in enrolled students, enough students must leave a specific school to enable the District to close a classroom, the entire school, or to eliminate another significant source of cost. And, because charter schools continue to enroll students from throughout the city, this is often not a possibility.

The Investigation Team’s document review, however, indicated that some (unidentified) Board of Education members in 2019 expressed a preference against charter sector growth and wanted to consider the financial impact of charter schools on the District’s finances. On or around February 11, 2019, a policy advisor for the District created a document titled “Summary of Philadelphia Board of Education Interviews.” In relevant part, the document noted:

No Board members indicated a strong preference for new charter schools or additional charter school seats. The vast majority think the number of schools and seats should remain the same or be somewhat lower. They emphasize using authorizing powers to ensure high quality schools

The vast majority of the Board would like to consider the impact of charter school decisions on District finances.

The Investigation did not reveal further action by the Board of Education regarding the above.

(c) A Conflict Exists between the CSO’s Role as the Board of Education’s Evaluating Arm and Its Ability to Serve as a Resource to Charter Schools

Given the concerns that have been raised about the financial conflicts of interest between the Board of Education and the charter school sector generally, it is not surprising that similar tensions also exist between the CSO and charter schools. Many interviewed – both from within the charter school sector and those associated with the District – noted that, unlike other jurisdictions, Philadelphia lacks a standalone or independent entity that provides support to charter schools. For example, New York City’s Charter School Center “help[s] new charter schools get started, support[s] existing schools and build[s] community and political support so that high quality charters can flourish.”¹⁹⁷ And in Texas, the Texas Public Charter Schools Association supports charter schools in the state and lobbies for a “policy and regulatory climate that ensures every

¹⁹⁷ See The N.Y.C. Charter School Center, About Us, <https://nyccharterschools.org/about-us/> (last visited June 18, 2023).

student in Texas has access to ever-improving public school options[,]” namely charter schools.¹⁹⁸ Both of these organizations are independent from the authorizing entities. In Philadelphia, although the Board of Education serves as the authorizer under Pennsylvania’s Charter School Law, it has delegated to the CSO “the responsibility for the development of administrative procedures for implementation and enforcement” of the Board of Education’s charter authorizing standards.¹⁹⁹ Pursuant to this authorization, and as discussed more fully in Part IV.B.4, *infra*, the CSO has developed the Framework to monitor and evaluate charter school performance annually.²⁰⁰ Additionally, the CSO utilizes the Framework to evaluate schools during their renewal year and, pursuant to those evaluations, often issues recommendations for charter renewals to the Board of Education.²⁰¹

In addition to serving as the evaluating arm of the Board of Education, District policy also mandates that the CSO “provide the charter schools with appropriate operational support.”²⁰² Such support may include responding to questions and concerns, assisting with operational functions stipulated in a charter agreement, disseminating updates in authorizing practices and procedures, and providing compliance-related technical assistance, including professional development at a reasonable fee.²⁰³

Yet, several interviewees from the charter sector expressed concern that although the CSO is supposed to serve as a resource to charter schools, in practice it does not. For example, one former charter school leader opined that the CSO could do a better job of providing charter schools with technical assistance, such as completing state or federally mandated paperwork. This same individual also expressed frustration that the CSO would wait until the end of a school’s charter to identify for the school a “significant issue” in its ACE-R report that might preclude a renewal recommendation. Rather, this individual believed that the CSO should provide charter schools with updates on their progress on all renewal criteria in the years preceding renewal.²⁰⁴ Another charter school leader expressed frustration that the CSO was difficult to reach²⁰⁵ and was not

¹⁹⁸ Texas Public Charter Schools, Our Mission, <https://txcharterschools.org/who-we-are/> (last visited June 18, 2023).

¹⁹⁹ The Sch. Dist. of Phila., Policy 401, Charter School Authorizing Functions at 4 (adopted Nov. 19, 2020).

²⁰⁰ The Sch. Dist. of Phila., Evaluation, Charter Schools Office, <https://www.philasd.org/charterschools/evaluation/>

²⁰¹ The Sch. Dist. of Phila., Policy 401, Charter School Authorizing Functions at 4 (adopted Nov. 19, 2020).

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ In the years preceding renewal, however, the CSO does provide feedback to charter schools regarding their performance by way of annual ACE reports. This practice began in 2016.

²⁰⁵ This charter school leader reported that some of their frustrations regarding a lack of responsiveness from the CSO was remedied upon building relationships with individuals in the CSO. For example,

collaborative in nature. They provided as an example an incident in 2019, when the City of Philadelphia passed a new ordinance that required schools to test their water quality. As a result, charter schools were required to comply with this ordinance, and their compliance was evaluated as part of the Framework. The charter school leader, however, noted that only some schools learned of this requirement from the CSO. In fact, they reported only learning of the new requirement after a reporter contacted them. Thus, they expressed frustration that a school's political connections and/or connections to the CSO could determine whether a school received notice of a new requirement and that this could impact a school's prospects for renewal. Another charter school leader opined that the CSO does not serve as a resource to charter schools as its allegiance is to the District. And, another charter school leader stated that although they had been working with the CSO since approximately 2000, recently the CSO ceased to be collegial in its interactions with the charter sector. In fact, this charter leader described the CSO and the District as "anti-charter," noting not only a lack of collaboration, but also a contentious nature to their relationship.

This criticism, however, was not universal. One charter school leader reported that the CSO's recent creation of office hours had proven helpful. While these office hours were "extremely helpful . . . but limited," and "few and far between," they provided the charter school's staff with the ability to obtain real-time feedback on documents prior to their submission to the CSO. Indeed, this charter school leader – who had been involved with their school since 2019 – stated that they had not experienced a time where they had asked for support from the CSO and did not receive it. This same charter school leader explained that they did not feel that racial bias has a role in the CSO's evaluation of their school, nor do they feel that race was a determinative factor in their school's charter being renewed. Another charter school leader claimed that they "cannot with good conscience" say that the CSO displayed racial bias. They did state, however, that the CSO was "generally biased" but they did not have any evidence to support that the CSO is racially biased. And a third Black charter school leader did not recall anyone from the SRC or the District exhibiting racial bias or prejudice.

Although CSO Employee #6 noted that the CSO used to be more focused on evaluating schools rather than serving as a resource to them, this individual acknowledged that there has been a shift in the CSO's mindset in recent years. As a result, this individual reported that the CSO's staff has worked hard to develop new supports for the charter sector. Other CSO staff interviewed articulated ways in which they sought to serve as resources to the charter sector, consistent with the District's policy. For example, CSO Employee #4 described a process whereby the CSO distributed important information via a digital newsletter, tracked who opened the newsletter, and followed up with those who did not. CSO Employee #8 explained that the CSO seeks to serve as a resource to the charter school sector particularly with regard to upcoming and proposed changes to the Framework, as discussed more fully *infra* at Part IV.B.4. The CSO staff uniformly reported that the office makes itself available during regular office hours. CSO Employee #3 also explained

when they had an issue with school buses, they contacted the District's transportation department directly, copying the then-head of the CSO. The head of the CSO responded directly to the charter school leader, and the next day the issue was resolved. Thus, according to this charter school leader, whenever they copied the then-head of the CSO on their email communications, their issues were resolved promptly.

that, since 2021, the CSO has provided schools with an opportunity to submit compliance paperwork ahead of time for a “risk free” review of their documentation before the true submission window.

Yet, despite the fact that multiple CSO staffers articulated how the CSO strives to serve as a resource to charter schools, others expressed their view that the CSO’s dual roles as evaluator and supporter results in a conflict of interest. For example, CSO Employee #4 noted that the CSO could not advise charter schools on “inputs” or what they described as policies, procedures, and curricula the school implements, because the CSO ultimately evaluates the schools “outputs,” or results. While CSO Employee #4 acknowledged that charter schools often look to the CSO for advice and guidance on how to improve, they noted that because of this conflict of interest, the CSO often takes the position that it cannot provide this type of guidance. Specifically, the CSO has concern that should a charter school rely upon its advice, but later be found to be in violation of the Charter School Law or be recommended for nonrenewal, the school might blame the CSO. It is for this reason, CSO Employee #4 explained, the CSO is not permitted to tell schools what to do, although it may provide information in its newsletter about grant and other professional development opportunities. Nonetheless, this individual reported that this does not prevent the CSO from being generally available to charter schools to answer questions.

CSO Employee # 4 further attempted to explain how the CSO walks the line between providing guidance and not engaging in activities that it views as a conflict of interest. For example, a charter school may approach the CSO with a noncompliant policy. In response, the CSO may explain how the policy is noncompliant and provide a compliant example policy to the charter school. The CSO will not, however, provide “proactive” and/or “granular” support to a charter school. Doing so, in CSO Employee # 4’s view, would constitute a conflict of interest because the CSO’s advice cannot be the reason why charter schools do or do not have their charters renewed.

Internal documents further demonstrate this tension. In a document created to assist the District with a January 21, 2021 City Council Hearing, one of the “key messages” identified was:

We are charter school authorizers. It is not the job of the authorizer to provide the extra financial and resource support that a charter school may need in order to meet the performance standards that we expect for our students and tax payer dollars.

The document also recognized that “[e]ven though charter schools serve approximately one third of public school students in Philadelphia, there are very few organizations that exist to support their work and no resources dedicated to supporting BIPOC led schools in Philadelphia.”

CSO Employee #2 corroborated this viewpoint. In March 2021, while preparing for a discussion with the Governor’s office regarding the need for support for minority-operated charter schools, CSO Employee #2 wrote in a March 16 email:

Why is the local authorizer not the entity that can fix the problem?

The local authorizer is not traditionally the entity to provide technical assistance. It would be inappropriate for the authorizer to

write grants, redesign a school, or provide guidance on governance as the authorizer [sic] is responsible for measuring the outcomes of a school's performance, not inputs - this is what makes the concept of a 'charter' innovative - full autonomy for full accountability. If the authorizer were to provide these supports they would have to ensure clear lines of separation to ensure that the school could still be held accountable if it failed to 'turn around'.

What do other jurisdictions do to support BIPOC operated schools? How could governor provide support if there were dedicated funds for this?

Other jurisdictions have true technical support organizations to assist these schools. Given the influx of resources into the state, PDE could establish a fund for schools to receive added resources focused on redesign, restructuring, etc. They could provide targeted guidance regarding school governance, strategic planning, and overall sustainability. The CSO could provide these supports, but the same conflict of interest issues would persist. The Governor could be helpful in assisting authorizers with appeal language associated with this additional support over a defined timeline if they authorizer were able to help schools engage in re-design.

(d) Conflicts Between the District and Charter Schools Can Turn into Costly Legal Battles

The Investigation further revealed a third conflict of interest: because the Charter School Law provides multiple opportunities for a charter school to appeal an adverse decision taken by the Board of Education, there are times where a charter school may find itself adverse to the Board of Education in litigation. The Charter School Law provides for a specific appeals process for denied applications and decisions regarding existing charters.²⁰⁶ Section 1717-A(f) of the Charter School Law permits a denied charter school applicant to appeal the Board of Education's denial to the CAB.²⁰⁷ Then, the CAB's decision is subject to appellate review by the Commonwealth Court.²⁰⁸ For existing charter schools, Section 1729-A(d) of the Charter School Law provides that a "charter school may appeal the decision of the local board of school directors to revoke or not renew the charter" to the CAB.²⁰⁹ As is the case when a new charter application is denied, the CAB's

²⁰⁶ Auditor General, *School District of Philadelphia's Oversight and Monitoring of District Authorized Charter Schools*, 9 (April 2016), <https://www.paauditor.gov/Media/Default/Reports/sch77432PhiladelphiaCitySDCSO040716.pdf>.

²⁰⁷ 24 P.S. § 17-1717-A(f).

²⁰⁸ *Id.* at § 17-1717-A(i)(10).

²⁰⁹ *Id.* at § 17-1729-A(d).

decision on a nonrenewal or revocation is appealable to the Commonwealth Court.²¹⁰ Exercising the appellate rights guaranteed in the Charter School Law are not only time consuming, but also costly for both the charter school and the District.²¹¹

Indeed, a 2016 Auditor General Report on the *School District of Philadelphia's Oversight and Monitoring of District Authorized Charter Schools*, analyzed the impact of the charter appeals procedures and legal fees incurred as a result upon the District's operations.²¹² The Auditor General's Report concluded that the Board of Education's role as the local charter school authorizer "has resulted in uncontrollable and unpredictable legal costs, as well as legal complications over the past several years."²¹³ This constant litigation impacts the District's ability to oversee the charter sector because it is difficult to plan: "[c]ontinual appeals extend cases for several years" and in the interim the school remains open.²¹⁴ The 2016 Auditor General Report concluded that "[t]he resources, time, and costs involved with these legal battles place additional strain on the District's finances and hinder its attempts to improve charter oversight[.]"²¹⁵

In some situations, legal disputes can arise over issues outside of the authorization and renewal process. For example, one charter school leader reported that their school enrolled students beyond their charter's enrollment cap. When the District refused to pay the charter school for these additional students, the charter school sought funding directly from the PDE, as the school was entitled to do by law.²¹⁶ Although the PDE initially awarded the school relief, a lengthy legal battle ensued between the District and the charter school that spanned years, costing both parties considerable attorney's fees.²¹⁷ Ultimately, the school lost in the Supreme Court and was required to refund the District \$1.5 million dollars.²¹⁸ The school's financial distress, at least in part, contributed to the school's closure.

²¹⁰ *Id.* at § 17-1729-A(h).

²¹¹ See Auditor General, *School District of Philadelphia's Oversight and Monitoring of District Authorized Charter Schools*, 9 (April 2016), <https://www.paauditor.gov/Media/Default/Reports/sch77432PhiladelphiaCitySDCSO040716.pdf>.

²¹² *Id.*

²¹³ Auditor General, *School District of Philadelphia's Oversight and Monitoring of District Authorized Charter Schools*, 1 (April 2016), <https://www.paauditor.gov/Media/Default/Reports/sch77432PhiladelphiaCitySDCSO040716.pdf>.

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Sch. Dist. of Phila. v. Dep't of Educ.*, 92 A.3d 746, 749 (Pa. 2014).

²¹⁷ *Sch. Dist. of Phila. v. Dep't of Educ.*, 41 A.3d 222, 224 n.1 (Pa. Commw. Ct. 2012), *rev'd on other grounds*, 92 A.3d 746 (Pa. 2014).

²¹⁸ *Sch. Dist. of Phila. v. Dep't of Educ.*, 92 A.3d 746, 749 (Pa. 2014).

Many interviewees – both from the charter sector and associated with the District – noted that the costs of litigation play a role in the authorization process. For example, some persons from the District noted that because the appeals process is drawn out pursuant to the Charter School Law, resulting in significant costs to the District, the Board of Education would consider including a surrender clause²¹⁹ in a charter renewal when there were doubts about a charter school’s ability to meet the required standards to remain open. Staff from the District further explained that members of the Board of Education are aware of the litigation costs associated with the appeals process, and it can factor into their decision-making process as an authorizer. Indeed, CSO Employee #6 speculated that the Board of Education has abstained from taking action against a charter school that is a member of a larger CMO because doing so would only result in a long and expensive legal battle.

Those interviewed from the charter sector also expressed concern about the costs associated with the appeals process as well as the tensions created by initiating litigation against the District.²²⁰ One former charter school leader noted that the legal fees associated with the appeals process directly impacted their ability to continue to operate their school, as they lacked the necessary resources as an individual school to litigate against the District. Another former charter school leader expressed concern that Black-led charter schools are unable to access representation in the appeals process, as the costs associated with such representation are prohibitive. Indeed, according to this individual, their school was only able to continue its appeal because the firm representing it continued the representation on a *pro bono* basis. This individual further expressed concern that charter schools, particularly standalone Black-led charter schools, may close simply because they cannot afford the legal fight.

2. *Some Black-led Charter Schools are More Likely to Face Barriers to Accessing Resources*

Because of the enduring effects of systemic racism (as discussed by some District witnesses, *see infra*), some Black charter school founders and leaders can face unique barriers to accessing resources that can help a charter program thrive financially and structurally, particularly as a standalone school.²²¹ Despite the inherent difficulties of founding and running charter schools, many interviewed noted that Black charter school leaders in Philadelphia have worked for decades

²¹⁹ As explained in Part IV.B.3(e), a surrender clause is a term included in a school’s charter that requires a school to surrender its charter and waive its appellate rights if the school fails to meet certain other conditions enumerated in the charter.

²²⁰ We note that one charter school leader reported that there was a period of time when they refused to sign a charter for their school because the draft that was provided included a clause that would have allowed the District to seize the school’s building if the school were to lose its charter. They noted, however, that during the period of time when the charter school and the CSO were in disagreement over the charter’s terms, their relationship with the CSO remained unchanged.

²²¹ *See, e.g.,* Camille Wilson & Lauri Johnson, *Black Educational Activism for Community Empowerment: International Leadership Perspective*, 17:1 INT’L J. OF MULTICULTURAL EDUC. 102, 104 (2015) (“Educational activism . . . has been a pivotal activity for Black community members to resist structural racism in public educational systems and strive for systemic change”).

to open charter schools as an alternative for the children in their communities. This effort has become more difficult in recent years. As a 2020 report explained, in response to concerns about charter school quality, many jurisdictions reformed their charter authorization process to impose more stringent compliance requirements for all applicants.²²² Yet, these new requirements can “impose substantial burdens for Black and Latino would-be charter operators, as well as independent operators, who may lack access to social and financial capital.”²²³ Indeed, the 2020 report ultimately found that “Black and Latino applicants are disproportionately and negatively impacted by increasing regulation.”²²⁴ Recently, the Philadelphia City Council’s Committee on Education held a hearing “to identify and examine potential systematic biases in oversight that create inequalities between Black- and White-led charter schools, resulting in fewer resources or support for Black-founded and led institutions.”²²⁵ In his hearing testimony, Dr. Robert Maranto explained that his recent study found that “among charters founded by Black educational entrepreneurs . . . almost a third closed compared to just under 15 percent of other charters.”²²⁶

Below, we discuss two unique barriers that Black charter school leaders face in meeting the increasing compliance requirements: (1) Black-led charter schools are often “standalone” schools not affiliated with a Charter Management Organization (“CMO”); and (2) some Black-led charter schools face unique barriers in recruiting and retaining connected and resourced board members.

(a) Black-led Charter Schools are Often “Standalone” Schools not Affiliated with a Charter Management Organization

Generally, two types of charter schools operate in Philadelphia: standalone charter schools and those that are part of a CMO. A standalone charter school is a single school that is not affiliated with any other schools.²²⁷ Standalone charter schools are located within a single community.²²⁸

²²² Kingsbury et al., *supra* note 5, at 1 (analyzing authorization data from Oregon, Arizona, North Carolina, Arkansas, Texas, Ohio, Nevada, Indiana, and New Orleans Parish); *see also* Sch. Dist. of Phila, CSO, *Evaluation*, <https://www.philasd.org/charterschools/evaluation/> (“In 2018, the CSO released an updated Charter School Performance Framework, based on charter sector feedback, research, and national standards for charter authorizing.”).

²²³ Kingsbury et al., *supra* note 5, at 1.

²²⁴ *Id.*

²²⁵ The Council of the City of Philadelphia – Committee on Education, *Public Hearing on Resolution 210218 Regarding Bias in the Charter School Oversight Process* at 5:18-23 (Apr. 22, 2023), <https://www.transcriptroom.org/tr/CAF/TranscriptsWithoutLogin?serviceName=Transcript+Room+-+Committee+Hearings&selectedCategoryApID=8254439&month=-+Month+-&year=2023&searchTxt=>.

²²⁶ *Id.* at 10:9-25.

²²⁷ Kingsbury et al., *supra* note 5, at 3–4.

²²⁸ *Id.*

In contrast, CMOs are nonprofit organizations that operate networks of multiple charter schools.²²⁹ Schools within a CMO typically provide a common curriculum and governance structure.²³⁰ The “largest and most noted example” of a CMO network is the “Knowledge Is Power Program (“KIPP”), with 224 schools in 22 states.”²³¹ “In the late 1990s and early 2000s, the major philanthropies funding charter schools invested heavily in CMOs and similar organizations, spending an estimated total of \$500 million between 1999 and 2009.”²³² As a result, CMOs often have well-resourced central offices that can provide support to member-schools.²³³ This is critically important in a state like Pennsylvania, where the Charter School Law is complex. And, given the complexity of the Charter School Law, charter schools in Pennsylvania must complete voluminous compliance paperwork annually.²³⁴ CMOs are able to leverage their central offices to help complete this task.

On the other hand, “inherently local, standalone charters lack the infrastructure, economies of scale, and often the desire to grow quickly[.]”²³⁵ But, standalone schools also tout their own unique benefits. As some scholars have noted, many parents “may prefer standalone schools for reasons unrelated to test scores, including safety and cultural affinity[.]”²³⁶ Some argue that “privileging established networks over aspiring standalone charter schools largely blunts the degree to which local stakeholders can influence and feel ownership of schools, undermining representative bureaucracy models in which legitimate state actors resemble the communities they serve, particularly demographically.”²³⁷

²²⁹ *Id.* “Charter Management Organizations (CMOs) are management organizations with a nonprofit tax status. . . . Education Management Organizations (EMOs) are management organizations with a for-profit tax status.” Rebecca David for the National Alliance for Public Charter Schools, *National Charter School Management Overview 2016-17*, 2 https://www.publiccharters.org/sites/default/files/documents/2019-06/napcs_management_report_web_06172019.pdf. National Alliance for Public Charter Schools is a nonprofit organization “committed to advancing the charter school movement.”

²³⁰ Kingsbury et al., *supra* note 5, at 4.

²³¹ *Id.*

²³² United States Dep’t of Educ., *Charter Management Organizations*, NATIONAL CHARTER SCHOOL RESEARCH PROJECT (2010), <https://files.eric.ed.gov/fulltext/ED516844.pdf>.

²³³ Kingsbury et al., *supra* note 5, at 4.

²³⁴ *See id.* at 5 (“As one White charter operator, a former city council member with an Ivy League degree documents, highly complex regulations by charter authorizers and regulators require operators to move quickly to assemble highly complicated documentation to operate, often multiple times[.]”).

²³⁵ *Id.*

²³⁶ *Id.* at 4.

²³⁷ *Id.*

However, the upside of standalone charter schools can come at a cost, as research has shown that standalone charter schools are more likely to encounter challenges meeting compliance requirements. A study of charter applications from nine states²³⁸ in the 2010-18 period found that charter schools associated with CMOs are more successful in navigating compliance requirements.²³⁹ That study concluded, “as with other services, higher barriers to entry in the provision of charter education favor those with greater resources to negotiate those barriers, and those who resemble the regulators, with substantial and likely unintended costs.”²⁴⁰ And, a National Association of Charter School Authorizers (“NACSA”)²⁴¹ study looking at proposals and approvals for new schools by operator type across a number of states from 2013-18 found that “although most proposals were unaffiliated with a network, the majority of schools approved (61 percent) were affiliated with . . . a nonprofit CMO[.]”²⁴²

Thought leaders interviewed noted that standalone school applications are less likely to be granted in the first place when compared to applications submitted in concert with a network. According to the thought leaders’ anecdotal experience, standalone schools are also more likely to be founded by people of color. The thought leaders opined that, because of this trend, minority applicants might not have access to the necessary (1) facilities, (2) philanthropy, and/or (3) networks as compared to White applicants. During his recent testimony before the Philadelphia City Council’s Committee on Education, Dr. Robert Maranto opined that through his work, he has found that authorizers and administrators prefer CMOs because they are big, well-resourced, and more easily meet compliance requirements.²⁴³

And, the Investigation revealed that the same trends seem to hold true in Philadelphia. Most of the Black-led charter schools that were closed by the SRC or the Board of Education over the

²³⁸ *Id.* Notably, this report did not include Pennsylvania. Rather, the states studied included: Oregon, Arizona, North Carolina, Arkansas, New Orleans, Texas, Ohio, Nevada, and Indiana.

²³⁹ *Id.* at 19. However, charter thought leaders cautioned that the number of Black leaders of charter networks or CMOs is rising, so it is not the case that all standalone charters are run by BIPOC individuals or that all networks are run by White individuals.

²⁴⁰ *Id.*

²⁴¹ NACSA is a national authority on charter school authorizing.

²⁴² Or a for-profit Education Management Network, which are not prevalent in Philadelphia. NACSA, *Charter School Pipeline Analysis* (2019), <https://qualitycharters.org/research/pipeline/analysis/#section3>.

²⁴³ The Council of the City of Philadelphia – Committee on Education, *Public Hearing on Resolution 210218 Regarding Bias in the Charter School Oversight Process*, 16:10-23 (Apr. 22, 2023), <https://www.transcriptroom.org/tr/CAF/TranscriptsWithoutLogin?serviceName=Transcript+Room+-+Committee+Hearings&selectedCategoryApID=8254439&month=-+Month+-&year=2023&searchTxt=>.

Relevant Time Period were standalone charter schools. Further, CSO Employee #6 reported that a majority of Black-led charter schools in Philadelphia today are standalone schools.²⁴⁴

Multiple individuals interviewed noted that the impact of systemic racism could make it harder for Black leaders to succeed within the charter system. As CSO Employee #4, Board of Education Member #1, and Board of Education Member #2 explained, race-neutral processes can still produce inequitable results when those processes encounter systems impacted by racial bias. CSO Employee #4, for example, opined that systemic racism in banking and financial systems could affect the ability of Black charter school leaders to meet the financial success metrics within the evaluation framework. And, CSO Employee #2 explained that Pennsylvania’s charter evaluation system is unduly burdensome and compliance imposes significant administrative costs. CSO Employee #4 stated in a February 26, 2021 email that “We know that authorizing frameworks can be burdensome for schools, especially our BIPOC-led schools that tend not to be affiliated with CMOs.” CMOs are able to spread these significant costs across schools; however, standalone charter schools may find bearing these costs to be particularly difficult. CSO Employee #2 provided an example of such a burden: under the Charter School Law, charter school applicants must submit their curricula for every course and every grade.²⁴⁵ This requirement, which is not required in many jurisdictions, can be particularly burdensome upon a standalone school with limited staff and resources, whereas a school associated with a CMO can rely upon its central office and its resources to comply. In January 2021, the District recognized internally that “[t]he overwhelming reason that charter schools have closed and been closed starts with their financial capabilities. Standalone schools and schools with BIPOC leaders face immense challenges in securing the resources that many of their peer schools are able to secure.”

Those interviewed from the CSO further acknowledged that the Charter School Law requires that schools compile significant data to support renewal requests and that doing so imposes an administrative burden upon charter schools. For example, CSO Employee #5 stated that a school’s infrastructure affects its ability to focus on collecting the data required for the renewal process, and that staffing limitations in particular affect a school’s ability to gather data and to timely and

²⁴⁴ Nine of the thirteen schools that the Board of Education/SRC determined not to renew or to revoke during the Relevant Time Period were standalone schools. Four CMO-run schools – Daroff, Bluford, Olney, and John B. Stetson – were recommended for closure during the Relevant Time Period. All four of these schools were Renaissance schools. In addition to being associated with a CMO, Daroff and Bluford are further distinct in that neither was closed during the Relevant Time Period. Thus, CSO Employee #3 disputed the assertion that all closed schools during the Relevant Time Period were standalone schools.

²⁴⁵ Per Section 1715-A of the Charter School law, “Charter schools shall be required to comply with the following provisions:

...

(8) A charter school shall participate in the Pennsylvania State Assessment System as provided for in 22 Pa. Code Ch. 5 (relating to curriculum), or subsequent regulations promulgated to replace 22 Pa. Code Ch. 5, in the manner in which the school district in which the charter school is located is scheduled to participate.”

thoroughly meet the requirements of the renewal process. CSO Employee #5 explained that schools that are a part of a network typically have large systems and teams that are dedicated solely if not predominantly to data collection. This employee explained that CSO staff try to provide as much support as possible during the data collection process and meet with schools that are struggling to meet the requirements because the CSO does not want a school to produce inaccurate data because of a limited administrative capacity. Similarly, CSO Employee #8 recounted interactions with a Black leader of a standalone school that was short-staffed and struggling to meet compliance deadlines. The staffer explained that, where they can, the CSO makes accommodations because the office is more interested in receiving the required documentation than penalizing late submissions. CSO Employee #4 provided a tangible example of the manner in which CMOs are able to leverage their size and resources to assist in meeting the CSO's requests, noting that network schools tend to have compliance officers. These compliance officers are tasked with ensuring that the schools within their network comply with the Charter School Law, and thus the Framework. Yet, principals of smaller, independent schools often are required to serve as the instructional leader for the organization as well as its compliance officer, among other duties.

Further to this point, some interviewees – both from the SRC and the CSO – acknowledged that CMOs may have an advantage when attempting to comply with the reporting requirements in the Framework. SRC Member #2 stated that economies of scale likely provide schools associated with a CMO with some infrastructural and financial advantages over standalone schools. This SRC member, however, reported that the SRC did not consider whether a school was a member of a CMO or a standalone charter school when rendering its decisions because it was only evaluating school performance. SRC Member #4 explained that the SRC might have viewed charter applications affiliated with a CMO more favorably if the CMO had a history of performing well. CSO Employee #4 opined that there are differences between CMO-related charter schools and standalone charter schools with regard to finances and negotiating power, which in turn impact what schools advocate for and how much schools spend on various inputs.

Despite the fact that many interviewees recognized that CMOs have distinct advantages due to their size, not everyone interviewed who was associated with the District thought that membership in a CMO directly correlated with better outcomes. For example, CSO Employee #1 expressly stated that CMOs were associated with poor outcomes in Philadelphia because their administrative resources are “spread thin” among many schools. Similarly, SRC Member #4 opined that schools associated with CMOs might have more difficulty meeting the Framework's requirements because the Charter School Law requires that each charter school (as opposed to CMO) have its own structure and board. This same individual also explained that they did not believe that standalone schools faced added difficulties complying with the Charter School Law.

Several Black charter school leaders whom were interviewed expressed concern that the charter school authorization and renewal processes were more challenging for Black-led charters. However, while many identified systemic issues that adversely impact Black-led charters across the board, none identified specific and intentional racially motivated actions by CSO employees

in the renewal process.²⁴⁶ Nonetheless, many described feeling understaffed and unsupported when trying to overcome the systemic challenges that exist.

One charter school leader reported that being short-staffed left them with few options to comply with CSO-imposed deadlines. This same leader explained how the lack of support has spread them thin, describing their role at their school as “custodian, HR director, a roofer, and more.” One Black charter school leader described the difficulties that they faced in securing financing when founding their school nearly twenty years ago. This individual reported that because banks were unwilling to give their school a loan, they had to conduct a property purchase through another entity. Another Black charter school leader expressed a general concern that the cards were stacked against standalone schools, noting that a “system that looks for four to five years of perfection is going to find problems with single-site schools.”

However, some Black charter leaders did not feel that their status as a standalone school impacted their interactions with the CSO or their ability to meet the Charter School Law’s mandates. For example, one Black charter school leader of a standalone school explained that their school had always been in “stellar” condition. And, another Black charter school leader of a standalone school expressed that because they had never had issues at their school, they could not speak to whether multi-campus or network schools have an advantage over standalone schools.

Regardless of the difficulties that standalone charters may face, many interviewees explained that there is a reason why Black-led charter schools in Philadelphia are often established as standalone schools, as many are founded in response to a community’s need. CSO Employee #3 explained that because Black-led charter schools are often created to address the specific needs of a particular community, they are far less likely to expand into a network. A member of the AACSC similarly expressed this sentiment, noting that the desire to serve the community outweighs the organization’s member schools’ desire to grow or form a larger organization of schools. This AACSC member further explained most Black charter school leaders in Philadelphia are intently focused on providing culturally competent education to their students above all else.²⁴⁷ Likewise, charter school leaders themselves noted that community is the central focus of many Black-led standalone charters in Philadelphia, explaining that these schools are more concerned with meeting the needs of their respective communities than they are in expanding into a business network and reaching economies of scale. One charter school leader explained that they were motivated to

²⁴⁶ A study published in 2016 “look[ed] at the disparity between African American-led nonprofits and their mainstream counterparts as it relates to funding, sustainability, obstacles of the past and opportunities for the future.” Andrey Popov, *Nonprofit success? It’s a matter of black and white, new Philadelphia study shows*, PHILA. BUS. J., Apr 28, 2016. The study found that Black-led organizations are typically smaller, “have fewer cash reserves and are more dependent on government grants than white-led organizations” and generally operate with fewer resources. *Id.* Thus, while none of those interviewed could tie their concerns explicitly to race, research has demonstrated that Black-led institutions face significant and unique barriers to resources in the nonprofit sector.

²⁴⁷ Further informing this dialogue is the large body of studies demonstrating that students of color have better academic outcomes when they are served by school leaders and teachers who share their racial and ethnic backgrounds. See Brendan Bartanen & Jason A. Grissom, *School Principal Race and the Hiring and Retention of Racially Diverse Teachers* (EdWorkingPaper No.19-59 2019).

open a charter school in Philadelphia to combat the “abysmal” college matriculation rate among Black youth in the city. A different charter school leader shared that they founded their school because they saw what children from affluent communities were receiving in terms of services from their schools and wanted similar opportunities for students in their community. A third charter school leader explained that at the charter school they lead, teachers were taught to focus on the “entire child” and to “teach with love.” This charter school leader explained that it is important for schools that serve Black students to have Black leaders because “[they] can’t be what [they] can’t see.” This charter school leader further noted their belief that charter schools do a better job serving the needs of Black children in poor neighborhoods. Therefore, according to this charter leader, for some Black children, charter schools are the key to their success.

Scholars agree with these sentiments; the literature suggests that in Black communities, Black “leaders may feel a deeper connection to and understanding of parents and students, which may in turn lead to improvements in achievement and less tangible school outcomes[.]”²⁴⁸

**(b) Some Black-led Charter Schools May Face Difficulties
Recruiting Connected and Resourced Board Members Outside
of Their Communities**

In addition to expressing concerns that their status as standalone charter schools has negatively impacted and continues to impact their access to resources and ability to comply with the Charter School Law’s mandates, some interviewees from Black-led charter schools expressed concerns about the challenges they encounter with recruiting connected and resourced board members.

Interviewees from the District noted that there were ways in which board leadership could have a tangible impact upon a charter school’s success. For example, CSO Employee #2 explained that having individuals with certain skillsets on a board, for example, attorneys or human resources professionals, can be immensely helpful to a standalone charter school. In fact, CSO Employee #2 stated that without the guidance from these types of board members, schools could find themselves in “bad situations.” These “bad situations” include an inability to meet the standards outlined in the Organizational Compliance portion of the Framework, or perhaps other legal issues. This sentiment seemed to be shared by Board of Education Member #2, who stated that Black charter leaders struggle to access “brain resources” and, as a result, have not been able to capitalize on opportunities that are available to better-connected schools.

Board of Education Member #3 explained that Black-led, standalone charter schools that lack access to wealthy board members are less likely to have the resources needed to successfully run a school, let alone meet compliance requirements.²⁴⁹ Board of Education Member #3 further opined that to be successful, a charter school cannot operate without affluent individuals on the board. This same individual referenced their own experience in working with a local charter school and opined that their school’s success was in large part due to the multiple wealthy individuals on

²⁴⁸ Kingsbury et al., *supra* note 5, at 5.

²⁴⁹ Notably, this former member of the Board of Education was a founding member of a successful Philadelphia charter school program.

the school's board. In fact, Board of Education Member #3 stated that when their school needed a new building, the school's board members were essential in obtaining the necessary funding.

CSO Employee #4 noted that board governance can be highly influential in the overall success of a school. According to this employee, some of the strongest charter schools in the city are led by what they would consider to be some of the strongest boards. CSO Employee #4 further explained their belief that strong boards are comprised of individuals who have access, knowledge, and political capital. This CSO employee noted that they had attended board meetings for many charter schools in Philadelphia, including those schools that have struggled with complying with the Framework. While the CSO employee stated that they found the boards for the struggling schools were often comprised of great people, they stated that some of these boards were lacking the financial, legal, and/or educational sector expertise necessary to comprise a strong board. In contrast, CSO Employee #4 perceived that the boards of successful schools were comprised of individuals with some kind of access to capital or the means by which to attract capital.

Some Black charter school leaders whom were interviewed agreed that it was difficult to recruit well-resourced and connected individuals to serve on their boards. One Black charter school leader acknowledged that having wealthy individuals on a board has an outsized impact on the overall success of the school. This same school leader – like CSO Employee #2 – explained that every board should have a lawyer, someone with human resources expertise, and an accountant, but reported their belief that it is harder for Black-led schools to obtain this kind of leadership on their boards.

Other Black charter leaders, however, stated that they faced no difficulty in recruiting connected and well-resourced individuals to their boards. These leaders noted that their schools have benefitted from having well-resourced individuals serve on their boards and involved with their schools. Further, a number of Black charter leaders interviewed reported that their schools' success could be attributed to their board members' political connections. One such leader explained that their school has two individuals on their board who are "well connected," which has enabled their school to share its concerns with politicians who can bring about change at the state and District level. This leader reported that having connected individuals on a board was simply a "plus." Thus, overall it seemed that the Black charter leaders interviewed felt that they were able to "tap in" to the political landscape despite difficulties in board recruitment.

Several Black charter leaders, however, indicated that they had experienced difficulties recruiting affluent or connected individuals to serve on their boards. The impact of this varied. One charter leader explained that their board was comprised of "interesting people" with backgrounds in education, noting that none of their board members were particularly affluent or connected. Nonetheless, this charter school leader reported that their board was effective and was able to make "solid" decisions for the school. A second Black charter school leader explained that a number of their school's board members are parents of alums because those individuals will be "actively involved" in the school. But, this charter leader did not attribute their school's success to the makeup of its board. A third Black charter school leader reported that their board was entirely made up of individuals from the community the school serves, none of whom was particularly wealthy. This charter leader explained that this did indeed negatively impact the school, as it limited the financial support the school received. Thus, the experience varied within the charter community regarding whether Black-led and founded schools faced difficulties recruiting well-

resourced and connected Board members and if so, whether that negatively impacted their school's ability to thrive.

Notably, Black-led charter schools did not express a concern about lacking in political connections, which, according to those interviewed from both the District and the charter sector, can prove helpful in the operation of a charter school. Indeed, Board of Education Member #1 noted that there is great interest amongst Black elected officials in Pennsylvania in protecting charter schools. This individual further stated that it would be unfair to say that these Black elected officials are not "influential." In fact, both Board of Education Members #1 and #2, as well as CSO Employee #2 cited this Investigation as proof of the influence that Black-led and -founded charters have.

Rather, the concern that many expressed, and a systemic issue identified by this Investigation, is that some Black charter leaders in Philadelphia have had and continue to face difficulties when trying to access and recruit connected board members, regardless of the would-be board member's race, from their community-centered institutions that are disproportionately located in underserved areas of the city.²⁵⁰

3. *The Renewal Process is Burdensome and Wants for Additional Transparency*

Throughout the course of the Investigation, Black charter leaders expressed concern that racial bias exists in the charter renewal process in Philadelphia. Indeed, this Investigation was launched in large part based upon this concern, and the concern that these biases may have resulted in the closure of a concerning number of Black-led and -founded charter schools in Philadelphia.

Specifically, many charter school interviewees voiced concerns about the transparency, length, and cost of the nonrenewal process. Indeed, one Black charter school leader described the nonrenewal proceedings as a "kangaroo court." Others expressed frustration that the process denied them the opportunity to present their side of the story directly to the Board of Education before a decision was made. Still others described the process as simply unfair. The critiques of the renewal process can be characterized as follows: (1) charter schools lack the ability to advocate to the Board of Education prior to a public decision whether to institute nonrenewal proceedings; (2) the renewal process the Board of Education employs lacks transparency; (3) the Hearing Officer – both conceptually and in practice – is biased in favor of the District; and (4) the renewal process is financially burdensome in a way that renders it coercive. However, given that the charter renewal process is a multifaceted process in Philadelphia that is proscribed by the Charter School Law, to understand the allegations of bias and burden, one must first understand the renewal process generally.

²⁵⁰ The discussion in this subsection does not mean that charter school boards can succeed only if they are comprised of persons with social or economic privilege. Rather, lived experiences, ties to the community being served, and passion for education, among others, are also important characteristics of valuable board members.

(a) An Overview of the Renewal Process

As noted *supra* in Part III.B, pursuant to the Charter School Law, the Board of Education is (and prior to 2018, the SRC was) the entity responsible for evaluating charter schools in Philadelphia.²⁵¹ The Charter School Law mandates that the Board of Education evaluate charter schools at least once every five years.²⁵² This aligns with the general requirement under the Charter School Law that charter schools are granted a charter for five-year periods. In certain circumstances, however, Charter School Law provides that the Board of Education may grant a one-year renewal.²⁵³ This exception applies where the Board of Education determines that there is insufficient data to adequately assess a charter school's academic performance, and that an additional year of data would assist in its decision whether to renew the charter for a period of five years.²⁵⁴

When determining whether to grant a renewal of a charter, the Board of Education must evaluate the charter school's performance. As noted *supra* in Part III.B, the Board of Education has, consistent with the Charter School Law, delegated its authority to evaluate charter schools to the CSO. Pursuant to the Charter School Law, the CSO evaluates charter schools for "compliance with its charter and this act and that requirements for testing, civil rights and student health and safety."²⁵⁵ As set forth in Part III.B, the Charter School Law permits local school boards to revoke²⁵⁶ or not renew a charter because of any of the following: "[o]ne or more material violations of any of the conditions, standards or procedures contained in the written charter," "[f]ailure to meet the requirements for student performance," "[f]ailure to meet generally accepted standards of fiscal management or audit requirements," failure to adhere to the Charter School Law, "[v]iolation of any provision of law from which the charter school has not been exempted," or fraud.²⁵⁷

²⁵¹ 24 P.S. §§ 17-1720-A, 17-1728-A, 17-1729-A.

²⁵² 24 P.S. § 17-1720-A.

²⁵³ *Id.*

²⁵⁴ *Id.*

²⁵⁵ 24 P.S. § 17-1728-A.

²⁵⁶ During the Relevant Time Period, the SRC/Board of Education revoked (rather than non-renewed) two schools' charters – Community Academy Charter School and Walter D. Palmer Leadership Learning Partners Charter School. Neither the Charter School Law nor the Board of Education's policies differentiate between revocation and nonrenewal. See The Sch. Dist. of Phila., Policy 400 & Policy 401. However, a school district may initiate charter revocation proceedings at any time. *Community Academy of Philadelphia Charter School v. School District of Philadelphia*, CAB No. 2013-12, 38 (Sept. 8, 2014), <http://tiny.cc/6kn7vz>. Thus, a school does not need to be seeking a renewal of its charter for the SRC/Board of Education to commence revocation. Besides this temporal difference, the process for nonrenewal and revocation is substantively the same. Thus, the Report addresses both nonrenewal and revocation concurrently.

²⁵⁷ 24 P.S. § 17-1729-A.

The process through which charter schools are evaluated in Philadelphia has not been consistent over the Relevant Time Period. Rather, there have been various iterations to the process. However, there are five steps to the non-renewal or charter revocation process that have remained the same throughout: (1) the CSO evaluates the school; (2) the Board of Education votes regarding whether to begin hearing officer proceedings; (3) the hearing officer, after holding hearings and hearing evidence and arguments from both the District and the charter school, issues a proposed adjudication; (4) the Board votes on whether to adopt the hearing officer’s proposed adjudication and non-renew or revoke the charter of the school; and (5) the appellate process.

(i) The CSO Evaluates Charter Schools

Each year, the CSO identifies schools that are at the end of their charter (whether it be a five-year charter or a one-year charter). All charter schools considered for renewal in a given year are considered a “renewal cohort” and together they proceed through the renewal process. Once the renewal cohort is identified, typically in the spring preceding a renewal decision, the CSO presents the group to the Board of Education. In addition to identifying which schools are in the renewal cohort, the CSO’s presentation also provides the Board of Education with a high-level timeline for the renewal process, including when the CSO expects to submit its recommendations to the Board of Education for approval. This presentation is made in a non-public forum, during an executive session,²⁵⁸ and is how the Board of Education is informed that the renewal process for these schools has begun. At some point after the non-public meeting, the CSO – specifically the Chief of the CSO, who presents at the executive session – makes a similar presentation during a public Board of Education meeting.²⁵⁹

Subsequently, consistent with the authority that the Board of Education has delegated to it, the CSO proceeds to evaluate the schools in the renewal cohort and to provide the Board of Education with a recommendation regarding whether to grant or deny renewal of a charter.²⁶⁰ To guide this evaluation process, the CSO conducts site visits, reviews documents submitted by the charter schools, and completes Renewal Recommendation Reports (the “ACE-R”).²⁶¹

²⁵⁸ Although the Investigation did not identify who has attended each one of these executive sessions over the course of the Relevant Time Period, typically, these sessions were attend by members of the Board of Education (or SRC, during the relevant years), the Board of Education’s Chief of Staff, CSO staffers – usually the Chief or the Acting Chief of the CSO – and members of the District’s OGC. Notably, because these meetings are non-public, only individuals who are associated with the District in some way are present during these meetings; members of the charter sector generally, or associated with the schools that are identified in the renewal cohort are not permitted to participate.

²⁵⁹ *Id.*

²⁶⁰ *Id.* Prior to 2021, the CSO’s presentation included its recommendation to the Board of Education regarding whether or not the Board of Education should vote to renew a school’s charter. This process, however, changed in 2021, when the CSO ceased to provide the Board of Education with a recommendation on renewal.

²⁶¹ *See* Part IV.B.4 for a full discussion of the evaluation process.

Nearly all charter school leaders interviewed expressed concerns about this process that the CSO utilizes. These concerns are discussed in Part IV.B.3.

(ii) The Board of Education’s Determination Regarding Whether to Initiate Nonrenewal Proceedings

Although the process that leads to the Board of Education’s public vote to issue a notice of nonrenewal is not identical year to year,²⁶² its general contours are described below.

After the CSO completes its evaluation of all the schools in a renewal cohort, it generates ACE-R reports for the schools and then presents them to the Board of Education to report on its findings. The CSO first reports on its findings to the Board of Education during a non-public executive session. During this session, the CSO presents on each school’s ACE-R report and answers Board of Education members’ questions. During the Relevant Time Period and prior to 2021, ACE-R reports included the CSO’s renewal recommendation, including if the CSO was recommending a school for nonrenewal.²⁶³ The ACE-R reports presented to the Board of Education in the executive session, unlike the public version of these reports, contain additional information to help the Board of Education understand how close the school was to meeting or failing to meet the evaluation criteria. Additionally, these ACE-R reports presented to the Board of Education include next to each criterion a percentile score representing the school’s performance (*e.g.*, 27% out of 100%). At the conclusion of its presentation, representatives from the CSO leave the meeting and Board of Education members are permitted to discuss the presentation amongst themselves in a continuation of the non-public executive session.

Shortly after the CSO’s presentation to the Board of Education in an executive session, the CSO delivers a similar presentation at a public Board of Education meeting.²⁶⁴ Following these presentations and ahead of the Board of Education’s public vote, the renewal process bifurcates between schools that the Board of Education is considering for renewal (usually those that the CSO recommended for renewal) and those that the Board of Education is considering for nonrenewal (usually those that the CSO recommended for nonrenewal).

For the former category of schools – those that the Board of Education is considering for renewal – the Board of Education instructs the CSO to start negotiating charter agreements with these schools’ leadership. Once the CSO and the school agree on charter terms, that school’s charter renewal is added to the Board of Education’s meeting agenda, which is posted publicly. These agenda items indicate the name of the school and that the Board of Education will be voting on this school’s charter renewal.

²⁶² Although we cannot describe every way in which the process may have differed from year-to-year, one key difference identified is in the number of meetings of the Board of Education, including executive sessions, and the format of the CSO’s presentation.

²⁶³ See, *e.g.*, Universal Daroff Charter School, Renewal Recommendation Report (2019-20), https://drive.google.com/file/d/1qx0-ShdNHmxzkIOIFEvYNT95pq1g_m0n/view.

²⁶⁴ See, *e.g.*, The Sch. Dist. of Phila., The SRC Meeting Minutes at 2–3; 21–26 (June 15, 2017).

For the latter category of schools – those under consideration for nonrenewal – the Board of Education asks the CSO to draft notices of nonrenewal. These notices state the grounds for each school’s nonrenewal.²⁶⁵ Schools are then added to the Board of Education public-facing meeting agenda, which includes a school’s name and indicates that the Board of Education will be voting on nonrenewal. Additionally, a few – usually three – days prior to the public meeting during which the Board will vote on a charter school’s nonrenewal, the CSO publishes the final ACE-R reports on its public-facing website.

During the Relevant Time Period, the CSO followed various practices related to sharing ACE-R reports with schools prior to making the reports publicly available – at times, sharing them only a few days before making them public. More recently, the CSO started sharing the ACE-R reports with the schools during a “preview window,” which occurs before the CSO makes ACE-R reports public. In any event, once a meeting of the Board of Education is scheduled to vote on renewal applications, charter schools are provided an opportunity to review their ACE-R reports.

During the public meeting, representatives from each charter school in the renewal cohort, community members, teachers, students, politicians, and the general public at large are provided an opportunity to comment on the CSO’s renewal recommendations. Regardless of the CSO’s recommendation or the ACE-R report’s findings, comments from these individuals including from the at-issue charter school’s leaders are limited to two minutes per individual.²⁶⁶ At the conclusion of the public meeting, the Board of Education votes to either approve the at-issue charter school’s renewal application or to issue a notice of nonrenewal.²⁶⁷ After a Board of Education member makes a motion to approve a charter school’s renewal application and the motion is seconded by another Board member, the entire Board then votes on the motion.²⁶⁸ If the majority of the Board of Education votes in favor of the motion to approve a school’s renewal application, the charter school is renewed.²⁶⁹ By the same token, if, based on a motion to issue a notice of nonrenewal, the majority of the Board of Education votes in favor of issuing a notice of nonrenewal for a school, the majority’s vote initiates nonrenewal proceedings.²⁷⁰

If the Board of Education votes to issue a notice of nonrenewal for a charter school, then the President of the Board of Education appoints a Hearing Officer. A Hearing Officer is an attorney

²⁶⁵ 24 P.S. §17-1729-A(c).

²⁶⁶ The Sch. Dist. of Phila., Administrative Procedures for Board of Education, Policy No. 005, 2, <https://www.philasd.org/schoolboard/wp-content/uploads/sites/892/2021/08/005-Admin-Procedures-Aug-2021.pdf>.

²⁶⁷ See, e.g., The Sch. Dist. of Phila., Board of Education Meeting Minutes at 5 (April 30, 2020).

²⁶⁸ *Id.*; see also The Sch. Dist. of Phila., Policy 401, Charter School Authorizing Functions (adopted Nov. 19, 2020).

²⁶⁹ *Id.*

²⁷⁰ See, e.g., The Sch. Dist. of Phila., Board of Education Meeting Minutes at 2–3; 21–26 (June 15, 2017); see also The Sch. Dist. of Phila., Policy 401, Charter School Authorizing Functions (adopted Nov. 19, 2020).

who presides over a public hearing concerning the nonrenewal or revocation and, at its conclusion, generates a report and a recommendation. The President chooses the Hearing Officer from a list provided by the Chief of Staff to the Board of Education. This decision, however, is made outside of the public meeting.²⁷¹ According to Board of Education Member #1, the individuals listed as potential Hearing Officers are included based upon their knowledge of and familiarity with the Charter School Law and their availability.

(iii) At the Board of Education's Direction, the Hearing Officer Conducts Nonrenewal Proceedings

After the President of the Board of Education appoints a Hearing Officer, the Hearing Officer proceeds to conduct a public hearing. For the Relevant Time Period, the majority of nonrenewal or revocation proceedings were overseen by the same Hearing Officer. The parties to such a hearing are the charter school and the District.²⁷² During the hearing, the District bears the burden of presenting sufficient evidence to substantiate the reasons for nonrenewal or revocation. Additionally, the hearing provides the charter school with the opportunity to offer evidence to contradict that nonrenewal or revocation is appropriate.²⁷³ And, both sides – the District and the charter school – may call witnesses and take testimony. Outside counsel usually represent the parties.²⁷⁴ The duration of the hearings vary; in the past, hearings have spanned from a single day to occurring over a period of months.²⁷⁵

²⁷¹ *Id.*

²⁷² *See, e.g., Universal Daroff Charter School v. The Sch. Dist. of Phila.*, CAB No. 2021-08 (2022), <http://tiny.cc/mkn7yz>.

²⁷³ 24 P.S. § 17-1729-A(c); *see also* Hearing Officer's Report, Delaware Valley Charter High School at 10 (2016) ("At the Public Hearing sessions (a) testimony was given by witnesses and (b) exhibits were (i) identified and offered into evidence by both the School District and Delaware Valley and (ii) admitted into evidence by the Hearing Officer. . . ."); Hearing Officer's Report, Olney Charter High School at 3-4 (2019) (listing the evidence put on by Olney Charter High School).

²⁷⁴ *See, e.g.,* Hearing Officer's Report, Delaware Valley Charter High School at 10 (2016) ("Representatives of the School District and Delaware Valley appeared and were represented by counsel at each session of the Public Hearing.").

²⁷⁵ *See* Hearing Officer's Report, Arise Academy Charter High School at 3 (2014) ("The hearing was held on March 28, 2014, as previously agreed by both parties."); Hearing Officer's Report, Olney Charter High School at 2 (2019) ("After a series of pre-hearing delays, the hearings in this matter and a separate matter regarding John B. Stetson Charter School ("Stetson") were interspersed on March 12, 13, 15, 18, 19, 20, 25, 26, 27 and 29, and April 2, 8, 9, 10, 12 and 15, 2019 (because the witnesses and testimony substantially overlapped)."); Hearing Officer's Report, Eastern University Academy Charter School at 9 (2018) ("The hearing was ultimately held on October 9, 10, 11, 12, 23 and 31, November 6, 8, 15 and 20, and December 5, 7, 15 and 20, 2017.").

Upon conclusion of the public hearing, the public has 30 days to provide comment.²⁷⁶ Additionally, each party – the charter school and the District – has the opportunity to submit proposed findings of facts and conclusions of law, and supporting memoranda of law.²⁷⁷ Thereafter, the Hearing Officer drafts a report based on their findings of fact and conclusions of law. The length of the process from the commencement of the public hearing until the issuance of the Hearing Officer’s report varies greatly and can take anywhere between three to over six months.²⁷⁸

(iv) The Board of Education Considers and Votes on the Hearing Officer’s Recommendation

The Hearing Officer first shares their report with the Board of Education. Following that, the Board of Education holds a nonpublic executive session with the Hearing Officer. Present during these non-public executive sessions are the members of the Board of Education and the Hearing Officer. During this session, members of the Board of Education have an opportunity to engage in a dialogue with the Hearing Officer. Notably, because this is a nonpublic session, no one from the charter sector, including representatives of the at-issue charter school or the CSO, is present for these discussions. Shortly after the Hearing Officer presents to the Board of Education in an executive session, a public meeting of the Board of Education is scheduled during which the Hearing Officer’s report is presented. During the public meeting, the Hearing Officer once again presents their findings, including the recommendation regarding whether the Board of Education should renew the school’s charter. Typically, at the conclusion of the public meeting, the Board of Education holds one vote. The Board of Education votes to either renew or not renew the school and to adopt or not adopt the Hearing Officer’s findings of facts and conclusions of law, as contained in its report. If the Hearing Officer recommends nonrenewal or revocation, and a simple majority of the Board of Education agrees, the school’s charter is not renewed or is revoked.²⁷⁹

(v) The Appellate Process

²⁷⁶ 24 P.S. § 17-1729-A(c).

²⁷⁷ See, e.g., Hearing Officer’s Report, Arise Academy Charter High School at 4 (“On May 21, 2014, Counsel for the School District submitted proposed findings of fact and conclusions of law, and both parties submitted briefs in support of their positions.”); Hearing Officer’s Report, Olney Charter High School (including as exhibits Olney Charter High School’s and the District’s proposed findings of fact and conclusions of law).

²⁷⁸ Hearing Officer’s Report, Eastern University Academy Charter School (2018) (taking five months); Hearing Officer’s Report, Walter D. Palmer Charter School (2015) (taking three months); *Delaware Valley v. School District of Phila.*, CAB No. 2016-06, 2 (2016), <http://tiny.cc/okn7vz> (“Public hearings were held over thirteen (13) days from October 1, 2015 through December 7, 2015. . . . On May 6, 2016, the SRC’s Hearing Officer submitted an Adjudication to the SRC . . .”).

²⁷⁹ See also The Sch. Dist. of Phila., Policy 401, Charter School Authorizing Functions at 4 (adopted Nov. 19, 2020).

Should the Board of Education vote to adopt the Hearing Officer’s recommendation of nonrenewal or revocation, the school may appeal the decision to the CAB.²⁸⁰ Once the Board of Education’s decision is appealed, the CAB must review the record, including the Hearing Officer’s Report and give “due consideration to the findings of the local board of directors and specifically articulate its reasons for agreeing or disagreeing with those findings.”²⁸¹ The CAB may also supplement the record with information that was previously unavailable.²⁸²

There is no set deadline, however, for the CAB to issue a decision. Rather, the timeline can vary greatly. A review of CAB decisions of schools closed during the Relevant Time Period demonstrates that the CAB has, at times, taken over a year to issue its decisions.²⁸³ Yet, while the appeal remains pending, Charter School Law mandates that the charter school be permitted to remain open.²⁸⁴ Both the District and the charter school are permitted to appeal the CAB’s decision to the Commonwealth Court and ultimately to the Pennsylvania Supreme Court.²⁸⁵ The Charter School Law does not, however, give charter schools an absolute right to remain open pending these appeals to Pennsylvania courts.²⁸⁶

**(b) Charter Schools Lack the Opportunity to Engage
Meaningfully with the Board Prior to a Public Decision on
Renewal**

Overall, interviewees – both from the charter sector and those affiliated with the District – agree that the decision not to renew a school’s charter has monumental consequences not only for the school, but also for the children who attend the school and the school’s broader community. Yet, despite the high stakes, charter school leaders interviewed universally expressed concern that they (and members of their larger school community) were deprived of the opportunity to advocate for their schools before the Board of Education in a meaningful manner prior to a public vote instituting nonrenewal or revocation proceedings. Multiple charter leaders further reported

²⁸⁰ 24 P.S. § 17-1729-A(d); *see also E. Univ. Acad. Charter Sch. v. Sch. Dist. of Phila.*, 265 A.3d 300, 302 (Pa. 2021).

²⁸¹ 24 P.S. § 17-1729-A(d).

²⁸² *Id.*

²⁸³ *See, e.g., The State Charter School Appeal Board Upholds the Nonrenewal of Charters for Olney Charter High School, John B. Stetson Charter School*, Board of Education (Feb. 15, 2023) <https://www.philasd.org/schoolboard/2022/02/15/the-state-charter-school-appeal-board-upholds-the-nonrenewal-of-charters-for-olney-charter-high-school-john-b-stetson-charter-school/>; *Daroff v. School District of Phila.*, CAB No. 2021-08, 1 (2021) (affirming on September 6, 2022, Board of Education’s decision from April 22, 2021 to deny Daroff’s request for renewal).

²⁸⁴ 24 P.S. § 17-1729-A(f) (“Except as provided in subsection (g), the charter shall remain in effect until final disposition by the appeal board.”).

²⁸⁵ 24 P.S. § 17-1729-A(h).

²⁸⁶ *Stetson v. School District of Phila.*, CAB No. 2019-06, 2 (2019), <http://tiny.cc/xkn7vz>.

concerns that they were not given sufficient time to talk with the CSO between learning their school would be recommended for nonrenewal and the publication of the ACE-Rs. As such, charter school leaders opined that the Board of Education (or at the time, the SRC) did not fully consider their input in their authorizing decisions.

One charter leader explained that the process lacked any “conversation” with the school’s leadership. Nor did this charter leader believe that the process properly considered the opinions of the students or other key stakeholders. Another charter school leader explained that the opportunity to present evidence and testimony to the Hearing Officer was insufficient. This individual explained that a public decision on nonrenewal, even just instituting nonrenewal proceedings, has significant consequences on a school because it may affect that school’s ability to, among other things, contract with vendors, obtain financing, and enroll students. For example, this leader opined that key vendors may be unwilling to contract with a school in nonrenewal proceedings. Moreover, charter school leaders noted that after the Board of Education publicly votes to initiate nonrenewal proceedings, parents may be unwilling to enroll their children in the school, which, in turn, would affect a school’s ability to receive adequate per pupil funding from the Commonwealth. Thus, as one charter school leader explained, once the Board of Education’s decision to initiate nonrenewal proceedings is publicly announced the “harm has already been done” to the school. This charter school leader further stated that the opportunity to present the school’s case to the Hearing Officer is both insufficient to remedy this harm and too late to ensure that the school’s and the community’s positions are heard. In short, those interviewed expressed a common concern: once the Board of Education votes to initiate nonrenewal proceedings, a charter school has already suffered significant and irreparable harm.

Board of Education Members #1 and #2 had heard the criticism that a vote to initiate nonrenewal proceedings causes harm to schools. But, Board of Education Member #1 explained that schools have multiple years before renewals to demonstrate their performance and that the Board of Education’s vote to initiate nonrenewal proceedings should not come as a surprise because it is a culmination of school’s poor performance over the years. This Board of Education member also took issue with the general critique that the CSO was adverse to charter schools, explaining that they perceived that the CSO serves as an advocate for charter schools.

In line with this view, the majority of the interviewed Board of Education or the SRC members were not concerned by what those from the charter sector asserted was a lack of opportunity to provide evidence directly to the Board of Education/SRC. These individuals found the community’s ability to testify at the public Board of Education meetings or to submit testimony prior to the Board of Education’s final vote sufficient.

(c) The Lack of Transparency in the Charter Renewal Process

Another common concern raised by charter-sector interviewees was that the renewal process lacked transparency. Specifically, these concerns relate to the Board of Education/SRC’s use of nonpublic executive sessions during the process. Some charter school leaders asserted that the manner in which executive sessions have been and continue to be used during this process may

violate Pennsylvania’s Sunshine Act.²⁸⁷ Members of the charter sector were not alone in voicing concerns. Rather, SRC and Board of Education members also expressed concerns about the use of executive sessions and questioned the propriety of receiving briefings from CSO employees in closed-door sessions regarding the same information to be presented publicly. While concerns with the District’s Sunshine Act compliance, if any, do not constitute racial discrimination, the lack of transparency – whether actual or perceived – engenders mistrust among some Black-led charter schools because they have been subject to increased regulatory scrutiny and school closure decisions by the Board of Education/SRC in higher numbers over the Relevant Time Period than their peers.

The Pennsylvania Sunshine Act (the “Act”) – also referred to as the Open Meetings Law – was enacted to provide citizens of the Commonwealth with first-hand knowledge of the activities of their government.²⁸⁸ The Act requires all meetings that are conducted by public agencies to be open to the public. In other words, the Act gives Pennsylvania’s residents a right to be present at most meetings held by public agencies.²⁸⁹ School boards are specifically identified as within the definition of “agency” in the Act, and as such, the Act applies to the Board of Education.²⁹⁰

The Sunshine Act, however, does not mandate that *all* Board of Education or SRC meetings, as a covered agency, be held in a public forum. Rather, the Act allows for the Board of Education/SRC to gather in a nonpublic manner where less than a simple majority of the Board of Education/SRC’s membership is present.²⁹¹ Nor does the Act require a public meeting where only “administrative action” is taken. Pursuant to the Act, “administrative action” is defined as “the execution of policies relating to persons or things as previously authorized or required by official action of the agency adopted at an open meeting of the agency.”²⁹² Furthermore, the Pennsylvania Supreme Court has held that closed door fact-finding meetings do not violate the Act when such meetings are held for informational purposes only and are not deliberative in nature.²⁹³

²⁸⁷ 65 Pa. C.S. §§ 701 *et seq.*

²⁸⁸ 65 Pa.C.S. § 701 *et seq.*

²⁸⁹ 65 Pa.C.S. § 702.

²⁹⁰ 65 Pa.C.S. § 703. During its existence, the SRC was also a covered entity under the Act.

²⁹¹ *Id.*

²⁹² *Id.* However, the “administrative action” exception does not exempt the *deliberation* of agency business. *Id.*

²⁹³ *Smith v. Twp. of Richmond*, 82 A.3d 407, 416 (Pa. 2013) (“[M]erely learning about the salient issues so as to reach an informed resolution at some later time does not in itself constitute deliberation.”).

Additionally, the Act provides that certain agency meetings may be held in a nonpublic forum referred to as an “executive session.”²⁹⁴ Pursuant to the Act, executive sessions are permitted in seven situations.²⁹⁵ Two of those covered situations are relevant here.

First, Section 708(a)(4), allows for an agency to meet in an executive session to consult with an attorney regarding information or strategy in connection with litigation or to discuss issues on which identifiable complaints are expected to be filed.²⁹⁶ Second, Section 708(a)(5) allows for an agency to meet in an executive session “[t]o review and discuss agency business which, if conducted in public, would violate a lawful privilege or lead to the disclosure of information or confidentiality protected by law.”²⁹⁷ This exception also permits for executive sessions to allow the agency to engage in quasi-judicial deliberations, which occur where an agency “engag[es] in fact-finding and deliberative functions in a manner similar to a court.”²⁹⁸

For an agency to conduct an executive session, the Act mandates that several procedural requirements be met.²⁹⁹ An agency may hold an executive session during an open meeting, at the conclusion of an open meeting, or at a future time, if announced. And, “[t]he reason for holding the executive session must be announced at the open meeting occurring immediately prior or subsequent to the executive session.”³⁰⁰

An understanding of the Act is relevant because it establishes the public’s (including those within the charter sector’s) expectations with regard to Board of Education/SRC meetings. Indeed, as described *supra*, in Part IV.B.3(c), the Board of Education/SRC utilizes executive sessions throughout the renewal process. It meets in executive sessions (i) at the outset, where schools are identified as being in the renewal cohort; (ii) after the CSO has completed its evaluation of the at-issue charter schools, but before the Board of Education votes to initiate nonrenewal proceedings; and (iii) at the end, where the Hearing Officer presents its findings to the Board of Education/SRC before presenting those findings to the public. Additionally, there are times during public sessions where the Board may adjourn into an executive session to seek guidance from the OGC prior to taking action, including voting on a renewal action. Interviewees who were present during these executive sessions noted that members of the CSO or the Hearing Officer, depending on when the

²⁹⁴ 65 Pa.C.S. § 708.

²⁹⁵ *Id.*

²⁹⁶ *Id.*

²⁹⁷ *Id.*; see also 65 Pa.C.S. § 716 (“Those deliberations or official actions which, if conducted in public, would violate a lawful privilege or lead to the disclosure of information or confidentiality protected by law, including matter related to the investigation of possible or certain violations of the law and quasi-judicial deliberations, shall not fall within the scope of this chapter.”).

²⁹⁸ *Riverwalk Casino v. Pa. Gaming Control Bd.*, 926 A.2d 926, 934 (2007) (citing *Kennedy v. Upper Merion Twp. Zoning Hearing Bd.*, 834 A.2d 1104, 1114 (Pa. 2003)).

²⁹⁹ 65 Pa.C.S. § 708(b).

³⁰⁰ *Id.*

executive session was held, were present; however, members of the charter sector were never present.

During the course of the Investigation, the Investigation Team heard various allegations and rumors regarding the Board of Education's frequent use of executive sessions. One charter school leader reported that they suspect that the Board of Education decides how it is going to vote on charter school renewal applications in executive sessions and that in these sessions, the Board of Education considers inappropriate factors (e.g. the impact of the charter sector's operation on the District budget). Board of Education members interviewed by the Investigation Team all denied these allegations and the Investigation did not substantiate them.

Two interviewees from the SRC expressed concerns with the use of executive sessions in the renewal process. For example, SRC Member #3 stated that they believed the SRC first discussed schools in executive sessions (as opposed to in public meetings) because, as it was described to them, the sessions were "quasi-judicial" in nature. SRC Member #3, however, said that they were "not sure" why the SRC did not discuss each school in a public forum, and that they had asked that very question "a couple of times" when they were a Commissioner.

SRC Member #1 expressed similar concerns. When asked why the SRC discussed the renewal process in executive sessions as opposed to in public meetings, SRC Member #1 used strong terms to express their personal opinion that the District was afraid of transparency. SRC Member #1 stated that they constantly voiced their opinion concerning the fact that the SRC's discussions about nonrenewal should occur in a public forum, explaining "I always thought we should have input from the people, [but] a lot of them [SRC members] did not see things that way." SRC Member #1 reported that they raised this issue multiple times, but were always told that having the conversations in a public meeting was not an option. SRC Member #1 stated they often left meetings "angry [and] in tears." Further, SRC Member #1 explained that they were not privy to some off-the-record SRC discussions and would hear about them "on the back end." SRC Member #1 attributed this to not being "respected as a Commissioner." They explained that they felt that other Commissioners "didn't" think much of [them] just like they don't think much of the parents they serve." SRC Member #1 stated that they think they were treated that way because they do not have a college degree and were not politically connected.

When pressed as to why an executive session is necessary for the CSO to present its findings before they are presented at a public meeting, those interviewed from the Board of Education had varying explanations: some said that it was a longstanding practice, others opined that it was done to protect the quasi-judicial nature of the authorization process, and still others stated that they were unsure as to the reason. Overall, Board of Education members reported that they have discussed that their decisions can appear to lack transparency because they do not have more of their conversations in public. Board of Education Member #3, for example, felt that the Board of Education could have been better at having more transparent conversations regarding nonrenewal decisions with the charter school sector. In fact, Board of Education Member #1 seemed open to modifying their process to increase transparency.

Overall, the Investigation revealed substantial concerns with the use of executive sessions in the renewal process. Although the SRC/Board of Education's use of executive sessions for fact-finding is not necessarily a violation of the Sunshine Act, it is particularly concerning because the

Board of Education may not be meeting in a quasi-judicial capacity in *every* executive session that it holds (e.g., those executive sessions unrelated to evidentiary hearings that require adjudication of facts and legal conclusions). Outside of the quasi-judicial context, the Pennsylvania Supreme Court has cautioned that private fact-gathering sessions might cross over into deliberations when they are held for the purposes of making a decision.³⁰¹ The SRC/Board of Education's use of executive sessions, in non-quasi-judicial contexts, to question the Chief or the Acting Chief of the CSO about the information that the CSO will later present at a public Board of Education meeting (but before they do so) could potentially cross over into improper deliberations, voting, or official action. In fact, Board of Education Member #2 stated that while Board members do not vote during executive sessions, there is a "temperature check" of Board of Education members' position based, at least in part, on their questions. Additionally, it is unclear how the CSO's presentation during the executive session provides Board members with additional or different information from the information presented to them during the public meeting. CSO Employee #3 and others confirmed that the presentation the CSO gives in the public meeting is similar to the one the CSO gives to the Board of Education in the executive session. According to CSO Employee #3 and Board of Education Member #2, Board of Education members ask similar questions in both presentations. Thus, while on its face the presence of the Chief or the Acting Chief of the CSO at the Board of Education executive session adds no value to the Board members' familiarity with the schools under consideration, it raises concerns that the conversations during these sessions are aimed at deliberating rather than fact-gathering.

In any event, this concern is further bolstered by how the SRC/Board of Education initiates the voting process. As explained *supra*, in Part IV.B.3(a), the Board of Education instructs the CSO to start negotiating charter renewal terms for some schools in the renewal cohort and to draft notices of nonrenewal for other schools. Both of these instructions to the CSO come before the Board of Education publicly votes on these schools' renewal application. At the very least, this suggests that at some point in the process prior to a public vote, the Board of Education decides whether each school is likely to be renewed.

(d) Hearing Officers Are Perceived As Pro-District and Anti-Charter

Multiple interviewees from Black-led charter schools expressed concern that the Hearing Officers the Board of Education selected to conduct nonrenewal proceedings were (and continue to be) biased in favor of the District. Further, they generally challenged the manner in which Hearing Officers are used by the Board of Education.

First, charter leaders asserted that it was unfair that the Board of Education has been able to unilaterally choose the Hearing Officer rather than agreeing to a neutral arbitrator or a panel of arbitrators with the at-issue charter school. Pennsylvania is not dissimilar from other jurisdictions, where a board of education's decision not to renew a charter school's charter is subject to an administrative hearing. However, the Investigation Team has not found another jurisdiction where

³⁰¹ *Smith v. Twp. of Richmond*, 82 A.3d 407, 416 (2013).

an agreed-upon or wholly independent panel is required to preside over such an adjudication.³⁰² For example, in New York, a charter school has the opportunity to request oral argument after a decision is made not to renew its charter. Yet, that oral argument is held before a panel of the Board of Regents – the state’s authorizing body.

Second, charter school leaders expressed concern that the Board of Education/SRC principally used two Hearing Officers – Hearing Officer #1 and Hearing Officer #2 – who have not only received significant work from the District over the years, but are also individuals whom the charter leaders feel are particularly biased against charter schools.³⁰³ Charter school leaders expressed the most concern regarding the Board of Education’s frequent appointment of the same Hearing Officer #1. In one of Hearing Officer #1’s engagement letters with the SRC, they stated that they would serve as an impartial Hearing Officer, but also promised to continue to advise the SRC regarding the proceeding and that that advice would be protected under the attorney-client privilege. One charter school’s representative expressed that it was impossible for Hearing Officer #1 to be impartial while simultaneously agreeing to serve as an attorney for one of the parties (which the Investigation found to be inaccurate). Indeed, the trends for hearing outcomes supports the concerns articulated by those from the charter sector; District Employee #2 stated that Hearing Officer #1 presided over every charter school hearing they recalled during their tenure with the Board of Education.³⁰⁴ District Employee #2 reported that in each and every case that Hearing Officer #1 was assigned and issued a report, they found in favor of not renewing the charter.

Hearing Officer #2’s involvement, however, was also concerning to those in the charter sector. Multiple Black charter leaders reported that Hearing Officer #2 served as a Hearing Officer in some nonrenewal proceedings and as an advocate for the District seeking nonrenewal in others.

³⁰² See, e.g., *Today’s Fresh Start, Inc. v. L.A. Cnty. Office of Educ.*, 303 P.3d 1140, 1156 (Cal. 2013) (finding that no due process violation occurred where the County Board of Education acted as an impartial decision maker); N.Y. EDUC. LAW § 2855; N.Y. COMP. CODES R. & REGS. tit. 8, § 3.17 (stating that in certain circumstances, “[t]he charter school shall, upon request, be provided an opportunity for oral argument before a panel of the Board of Regents consisting of at least three Regents designated by the Chancellor or the Board of Regents.”); *Richard Milburn Pub. Charter Alt. High Sch. v. Cafritz*, 798 A.2d 531, 548 (D.C. 2002) (holding that District of Columbia’s statute that requires the Board to conduct an “informal hearing” before revoking charter school’s charter is constitutionally sufficient).

³⁰³ Although charter school leaders expressed concern over the Board of Education’s appointment Hearing Officer #1 and Hearing Officer #2, over the Relevant Time Period, a review of relevant records reveals that the District only used Hearing Officer #1 over this period to conduct nonrenewal hearings. Hearing Officer #2, whom many charter school leaders were critical of, was tasked with presiding over matters related to charter school applications. Charter school leaders expressed concern that Hearing Officer #2 could not be unbiased in their role, given their longstanding engagement by the District on other matters. Nonetheless, the Investigation revealed that Hearing Officer #2 did not preside over any nonrenewal proceedings during the Relevant Time Period.

³⁰⁴ The Investigation Team confirmed that during District Employee #2’s tenure, Hearing Officer #1 presided over every nonrenewal hearing. And, during the Relevant Time Period, Hearing Officer #1 presided over 9 out of 13 nonrenewal hearings. Hearing Officers #3 and #4 presided over the remaining four hearings that took place during the Relevant Time Period.

As confirmed by the District, Hearing Officer #2 served as a Hearing Officer on two nonrenewal proceedings before they did any other charter school work for the School District. This same individual now represents the CSO in nonrenewal proceedings.

(e) The Renewal Process is Financially Burdensome for Charter Schools, Particularly Standalone Charter Schools, Rendering Surrender Clauses Particularly Coercive

During the course of the Investigation, charter sector interviewees raised concerns regarding the Board of Education's use of surrender clauses; as discussed above, the District also noted concerns about the frequency of use with "minority-led" schools. The Investigation revealed that, at times, instead of issuing a five-year renewal or commencing nonrenewal proceedings, the Board of Education renews a charter school with conditions and pursuant to a surrender clause.³⁰⁵ A surrender clause is a term included in a school's charter that requires a school to surrender its charter and waive its appellate rights if the school fails to meet certain conditions enumerated in the charter.³⁰⁶

Several charter school leaders raised concerns regarding the Board of Education's use of surrender clauses. Specifically, charter school leaders felt that the use of surrender clauses is both coercive and unfair. One charter school leader explained that surrender clauses are unfair because the Board of Education disproportionately uses them for schools that serve students from lower-income neighborhoods. According to this charter school leader, students who come from these neighborhoods often struggle academically. Thus, imposing strict academic success targets with severe consequences for failing to meet them (*e.g.*, through the use of a surrender clause) on schools that serve these students, does not benefit either the students or the communities they serve. According to that school leader, surrender clauses that utilize such metrics do not take into account the positive effects these schools have for the communities they serve as compared to the District-run neighborhood schools. Rather, according to this charter school leader, such surrender clauses are more likely to result in the closure of schools that serve these communities despite their positive effects.

Another charter school leader asserted that during the school's renewal process, the CSO included a surrender clause in a draft of their school's charter. This leader reported that, as a result, the school refused to sign the charter. This school's leader further explained that the surrender clause was "inherently unfair" because it was based on academic performance and did not allow them to challenge a potential decision by the District to non-renew or revoke their school's charter.

Interviewees from the Board of Education, however, expressed that the Board of Education utilizes surrender clauses, at least in part, as a cost-saving measure. As discussed *supra*, in Part IV.B.1(d), the litigation costs associated with the legal battles related to charter school nonrenewal are

³⁰⁵ The Sch. Dist. of Phila., Board of Education Meeting Minutes at 80–86 (Dec. 13, 2018).

³⁰⁶ *See id.*

significant.³⁰⁷ Thus, to “avoid the time, expense and uncertainty of further litigation” the Board of Education has used and continues to use surrender clauses.³⁰⁸ Indeed, at least one Board of Education member expressed during a public Board of Education meeting that they considered the cost of litigation in voting in favor of a surrender clause.³⁰⁹

Additionally, Board of Education Member #1 and CSO Employee #2 explained that they viewed surrender clauses as providing charter schools who were on the cusp of nonrenewal another opportunity for success. Board of Education Member #1, for example, explained that the Board of Education would likely have voted to initiate nonrenewal proceedings for a number of the schools that received surrender clauses, rather than permitting these schools to remain open for an additional year with the opportunity to improve and thereafter, receive a full five-year charter.³¹⁰

A review of the documents suggests that surrender clauses are most often used in Black-led school’s charters. In the late 2018 or early 2019 slide deck titled “Minority Led Charter Schools Briefing” discussed in Part IV.A.3, *supra*, the CSO analyzes surrender clauses. The slide lists charter schools with surrender agreements in preceding years.³¹¹ In conclusion, at the bottom of the slide the CSO writes “[i]n recent years, the CSO has made efforts to use surrender agreements as an intervention method to drive quality improvements. Four (4) charter schools that were previously recommended for non-renewal have executed surrender agreements with academic targets, three of which were minority-led.” Thus, the CSO’s own analysis supports the allegations that surrender clauses have been utilized in a greater number of minority-led schools than non-minority-led schools.

4. *The Evaluation Framework*

Many charter school leaders whom were interviewed, and even some CSO staffers and former SRC members, criticized the rubric the CSO uses to evaluate schools on an annual basis and in renewal years. The CSO calls this rubric the Charter School Renewal Framework. Below, we summarize this Framework, its origins, and the process the CSO utilizes to evaluate schools. We then describe the critiques of the Framework, and the process most often expressed by those we interviewed.

³⁰⁷ *Memphis St. Acad. Charter Sch. at J.P. Jones v. Sch. Dist. of Phila.*, No. 22-02760, 2022 U.S. Dist. LEXIS 215315, at *4 (E.D. Pa. Nov. 29, 2022).

³⁰⁸ The Sch. Dist. of Phila., Board of Education Meeting Minutes at 80 (Dec. 13, 2018).

³⁰⁹ The Sch. Dist. of Phila., Board of Education Meeting (Dec. 13, 2018), <https://bit.ly/3JLtvTU>.

³¹⁰ *Id.*

³¹¹ Data on the use of surrender clauses during the Relevant Time Period is not publicly available and was not provided to the Investigation Team.

(a) An Overview of the Charter School Performance Framework

In 2012, to improve the quality and clarity of its authorizing process, the then-existing SRC implemented the Authorizing Quality Initiative (“AQI”).³¹² As part of the AQI, in 2014, the CSO created the Charter School Performance Framework for use in evaluating charter schools.³¹³ Since 2014, the CSO has updated this renewal framework annually.

Initially, the CSO used the Charter School Performance Framework to evaluate charter schools in their renewal years.³¹⁴ In 2016, however, the CSO also began to assess charter schools’ performance annually in other years than their renewal years.³¹⁵ The annual assessments are to provide schools with interim evaluations for the years between charter renewals.³¹⁶ In these yearly evaluations, the CSO assesses schools’ performance based on a subset of metrics in the Charter School Performance Framework.³¹⁷ In other words, the evaluation criteria for nonrenewal and renewal evaluations overlap, however, the renewal framework contains additional standards relevant to renewal only (the annual and renewal frameworks collectively are referred to as the “Framework” herein).

Although the Framework has changed over the years, its structure and metrics have remained consistent. The Framework evaluates charter schools in three areas, which are titled as “domains”: (1) Academic Success, (2) Organizational Compliance and Viability (“Organizational Compliance”), and (3) Financial Health and Sustainability (“Financial Health”).³¹⁸ Each domain contains various standards grouped into categories.³¹⁹

The CSO uses these standards to evaluate charter schools’ performance. For example, the CSO evaluates whether a school meets board governance standards under the Organizational

³¹² The Sch. Dist. of Phila., Evaluation, <https://www.philasd.org/charterschools/evaluation/> (last visited June 19, 2023).

³¹³ See The Sch. Dist. of Phila., Phila. Charter Schools and Authorizing Quality Initiative (Apr. 24, 2014), <https://www.philasd.org/src/wp-content/uploads/sites/80/2018/05/April-SRC-Charter-Presentation-4.24.14-Final.pdf>.

³¹⁴ The Sch. Dist. of Phila., Evaluation, <https://www.philasd.org/charterschools/evaluation/> (last visited June 19, 2023).

³¹⁵ *Id.*

³¹⁶ *Id.*

³¹⁷ See The Sch. Dist. of Phila., Charter School Performance Framework (2021) <https://drive.google.com/file/d/1D6mo4RgtMOR-gepp2OceR19VnQOn7yGS/view>.

³¹⁸ The Sch. Dist. of Phila., Renewal, <https://www.philasd.org/charterschools/renewal/> (last visited June 19, 2023).

³¹⁹ See generally The Sch. Dist. of Phila., Charter School Performance Framework (2021) <https://drive.google.com/file/d/1D6mo4RgtMOR-gepp2OceR19VnQOn7yGS/view>.

Compliance domain by determining, among other factors, whether schools' board members receive certain trainings.³²⁰ The below charts summarize standards and categories contained under each domain, identifying those standards that the CSO only evaluates at renewal with an asterisk.

ACADEMIC SUCCESS DOMAIN	
Categories	Standards
Proficiency	PSSA/Keystone proficiency rate
Growth	Overall annual growth on PSSA/Keystone scores
	Lowest performing student annual growth based on PSSA/Keystone scores
Attendance	Percentage of students attending 95% or more instructional days
	Percentage attending >90% instructional days
Postsecondary Readiness (High Schools Only)	4-year cohort graduation rates
	ACT/SAT college readiness rates
	First-fall college matriculation rates

ORGANIZATIONAL COMPLIANCE AND VIABILITY DOMAIN	
Categories	Standards
Mission and Education Plan	*Mission implementation through educational plan and instructional program
	*School climate and culture
	*Parent and family engagement
Special Education	Child find notice
	Manifestation determination policy
	Manifestation determination practice
	*Screening
	*Monitoring
	*Tiered instruction
	*IEP progress monitoring
	*Secondary transition
	*IEP timeliness
*BSE findings	
English Learners	ESL policy
	EL timely evaluation
	ESL ACCESS
	*EL identification,
	*EL notification
	*EL exiting
Enrollment	Enrollment Policy
	Student application

³²⁰ *Id.*

ORGANIZATIONAL COMPLIANCE AND VIABILITY DOMAIN	
Categories	Standards
	Enrollment materials
	Enrollment language policy
	*Lottery and waitlist process
	*Enrollment process
	*Geographic preference alignment
Student Discipline	Code due process
	SDP alignment (Renaissance only)
	Truancy policy
	Expulsion process
Personnel	Certified ESL teachers
	Certified SPED teachers
	Certified instructional leader
	*Checks and clearances
Food, Health and Safety	Food safety
	Health services policy
	Emergency preparedness
	Water quality
	*Mandated health services
	*Certified school nurse
	*Food service program
Board Governance	Sunshine Act
	Board oversight
	Board accessibility
	Statements of financial interest
	Board member training
	Board contact information
	*Ethics Act
	*Board structure
Timely Reporting	Timely annual report
	Timely financial audit

FINANCIAL HEALTH AND SUSTAINABILITY DOMAIN	
Categories	Standards
Financial Health	Total margin
	Current ratio
	Cash on hand
	Net position
	Non-restricted fund balance
	Debt ratio
	Debt service coverage ratio
Fiscal Management	Audit findings
	Debt delinquency and default
	PSERS

FINANCIAL HEALTH AND SUSTAINABILITY DOMAIN	
Categories	Standards
	*Financial transactions
	*Related parties
	*Payroll

Once the CSO evaluates a school using the Framework, it issues a public-facing report. It issues an Annual Evaluation Report (the “ACE”) for annual evaluations and, as noted *supra* in Part IV.B.3, a Renewal Recommendation Report (the “ACE-R”) during a charter school’s renewal year.³²¹ The ACE-R contains the additional standards that the CSO evaluates only during renewal years.³²²

Unlike annual evaluations, during a renewal year, the CSO evaluates a school based upon its performance during its entire charter term.³²³

The CSO evaluates each standard by using a rating and/or a points system.³²⁴ Based on the total number of points or ratings a school receives in each category, the CSO determines if a school “Meets Standard,” “Approaches Standard,” or “Does Not Meet Standard” in each domain.³²⁵ As noted *supra* in Part IV.B.3, the CSO’s recommendations regarding renewal or nonrenewal are included in the school’s ACE-R report.³²⁶ Since 2020, however, if a school receives a “Does Not Meet Standard” rating in any domain, the CSO does not provide a renewal recommendation to the Board of Education. Rather, the CSO simply presents to the Board of Education its findings based on the Framework.

(b) Academic Success Domain

Section 17-1729-A of the Charter School Law grants the Board of Education the power not to renew a charter for, among other reasons, a school’s failure to meet academic requirements set out

³²¹ The Sch. Dist. of Phila., Evaluation, <https://www.philasd.org/charterschools/evaluation/> (last visited June 19, 2023).

³²² *Id.*

³²³ See e.g., Annual Charter Evaluation 2021-22, Renewal Recommendation Report, Boys’ Latin of Phila. Charter School, <https://drive.google.com/file/d/16VNLtZcGYVNutH5OdIRfSTsZ7c-7itL/view>.

³²⁴ *Id.*

³²⁵ *Id.*

³²⁶ See e.g., Annual Charter Evaluation 2019-20, Universal Daroff Charter School, Renewal Recommendation Report, https://drive.google.com/file/d/1qx0-ShdNHmxzkIOIFEvvNT95pq1g_m0n/view.

in the Pennsylvania Code.³²⁷ Specifically, charter schools are subject to the requirements outlined in Chapter 4 of the Pennsylvania Code.³²⁸ 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.”³²⁹ Although neither Chapter 4 of the Pennsylvania Code nor the Charter School Law specifies performance targets for charter schools (*e.g.* target scores that students need to reach on the PSSA), the Code sets forth an assessment system of student performance for Pennsylvania schools, which includes the PSSA and Keystone Exams.³³⁰ Based on this and other accountability systems established in Chapter 4, as well as standards promulgated by the PDE, the CSO, through the Framework, evaluates charter schools’ performance in the Academic Success domain.³³¹

The Academic Success domain includes four categories: proficiency, growth, attendance, and for charter schools serving high school grades, postsecondary readiness.³³² Each category consists of several standards.³³³ The CSO assigns each standard points.³³⁴ The numbers of points per category vary amongst categories.³³⁵ Thus, a school’s failure to meet a standard within one category may carry greater or lesser weight than its failure to meet a standard in another category.

If the CSO cannot evaluate a school’s performance in a certain category, it eliminates those points from the total score. For example, due to the disruption in the administration of standardized tests during the 2019-20 and 2020-21 academic years, the CSO could not evaluate schools’ performance in proficiency and growth categories.³³⁶ Accordingly, during the 2020-21 renewal process, the CSO removed those standards from the evaluation and the total number of possible points a school

³²⁷ 24 P.S. § 17-1729-A(a).

³²⁸ *See id.*; *see also* 22 Pa. Code §§ 4.1-4.83.

³²⁹ 22 Pa. Code § 4.2.

³³⁰ *Id.* at § 4.51.

³³¹ The Sch. Dist. of Phila., Academic Success, <https://www.philasd.org/charterschools/academic-success/> (last visited June 19, 2023).

³³² *See generally* The Sch. Dist. of Phila., Charter School Performance Framework (2021) <https://drive.google.com/file/d/1D6mo4RgtMOr-gepp2OceR19VnQOn7yGS/view>.

³³³ *Id.*

³³⁴ *See generally id.*

³³⁵ *Id.*

³³⁶ *See, e.g.*, Annual Charter Evaluation 2021-22 Renewal Recommendation Report, Alliance for Progress Charter School, <https://drive.google.com/file/d/1hMQbN4ezl1aP-qSiKzWJERJ3FlvaeKg4/view>.

could earn was reduced accordingly.³³⁷ Although this example relates to COVID-19, CSO Employee #3 reported that the principle applies in other domains and under different circumstances.

The CSO measures charter schools' compliance with some of the standards under the Academic Success domain by comparing the evaluated school's performance to the District average and to its Similar Schools Group ("SSG") average. Each charter school has an SSG.³³⁸ The CSO determines a charter school's SSG by grouping together schools that serve the same grades and similar students as the evaluated school. The CSO groups these schools together based on grades served, percentages of students living in poverty, special education rate, and English Learner rates.³³⁹ The CSO uses the SSG to evaluate charter schools' performance in the Academic Success domain.

(i) Organizational Compliance

Under the Charter School Law, the Board of Education may revoke or not renew a school's charter for, among other reasons, a school's violation of law.³⁴⁰ Although charter schools are generally exempt from the requirements of the School Code and certain other laws that apply to District schools, Sections 1715-A and 1732-A(a) of the Charter School Law explicitly make charter schools subject to certain enumerated provisions of the School Code.³⁴¹

Additionally, certain statutory or regulatory provisions not listed in the Charter School Law apply to charter schools by their charters' own terms. The CSO's evaluation of charter schools in the Organizational Compliance Domain focuses on whether or not charter schools meet these legal requirements.³⁴²

The Organizational Compliance domain includes nine categories: Mission and Educational Plan; Enrollment; Board Governance; Student Discipline; Special Education; English Learners;

³³⁷ *Id.*

³³⁸ The Sch. Dist. of Phila., Similar Schools Group, <https://www.philasd.org/charterschools/similar-schools-groups/> (last visited June 19, 2023).

³³⁹ *Id.*

³⁴⁰ See 24 P.S. § 17-1729-A(a) ("During the term of the charter or at the end of the term of the charter, the local board of school directors may choose to revoke or not to renew the chartered based on . . . violation of any provision of law from which the charter school has not been exempted, including Federal laws and regulations governing children with disabilities.").

³⁴¹ Pa. Dep't of Educ., Applicability of the School Code and School Laws to Charter Schools, Charter Schools, <https://www.education.pa.gov/Policy-Funding/BECS/Purdons/Pages/CharterSchools.aspx#:~:text=Applicability%20of%20the%20School%20Code.that%20apply%20to%20school%20districts> (last visited June 19, 2023).

³⁴² See The Sch. Dist. of Phila., Charter School Performance Framework (2021) <https://drive.google.com/file/d/1D6mo4RgtMOR-gepp2OceR19VnQOn7yGS/view>.

Personnel, Food, Health and Safety; and Timely Reporting.³⁴³ As with the Academic Success domain, each category contains several standards.³⁴⁴ But, unlike the Academic Success domain, there are no points assigned to each standard.³⁴⁵ Rather, during a charter school’s renewal evaluation year, the CSO uses Category Ratings Business Rules (or the “Business Rules”) to determine ratings for each of nine categories within the Organizational Compliance domain. A school’s overall Organizational Compliance domain rating is based on its rating in each category.³⁴⁶

The CSO first developed the Business Rules in 2021. Prior to that, according to CSO Employee #3, the CSO had rules that it followed, but those rules were not codified in one document. Rather, CSO Employee #3 explained that the Business Rules were part of the CSO staff’s collective institutional knowledge. At the time of their creation, the Business Rules were not publicly available, although the CSO did provide them to the charter schools. Since then, the CSO has made the Business Rules publicly available.³⁴⁷

a. Financial Health and Sustainability

Section 17-1729-A of the Charter School Law grants the Board of Education power not to renew a charter for a school’s failure to meet audit requirements as required by Pennsylvania Public School Code or generally accepted standards of fiscal management.³⁴⁸ In 2015, the CSO stated that “[c]harter law itself does not identify authorizer standards for financial stewardship; it simply states that schools must meet generally accepted standards of fiscal management and audit requirements.” The CSO’s reading of this requirement informs the CSO’s evaluation of a charter school’s fiscal management under the Financial Health and Sustainability domain. The CSO relies on the District’s Office of Auditing Services’ review of charter schools’ financial audits.

The Financial Health and Sustainability domain contains two categories: financial health and fiscal management. The standards the CSO uses under these categories align with the standards recommended by NACSA, which is a national thought leader on charter school best practices, and with the National Charter School Resource Center’s Guide to Fiscal Oversight.³⁴⁹

³⁴³ *Id.*

³⁴⁴ *Id.*

³⁴⁵ *Id.*

³⁴⁶ *Id.*; The Sch. Dist. of Phila., Charter School Performance Framework (2021) <https://drive.google.com/file/d/1D6mo4RgtMOr-gepp2OceR19VnQOn7yGS/view>.

³⁴⁷ *See also* The Sch. Dist. of Phila., Renewal Process, <https://www.philasd.org/charterschools/renewal/> (last visited June 19, 2023).

³⁴⁸ 24 P.S. § 17-1729-A(a); 24 P.S. § 2-218.

³⁴⁹ The Sch. Dist. of Phila., Financial Health and Sustainability, <https://www.philasd.org/charterschools/financial-health/> (last visited June 19, 2023).

(c) The CSO's Use of the Framework

During the annual evaluation process, the CSO collects from charter schools various documents to allow it to evaluate the Framework's standards.³⁵⁰ During a renewal year, the CSO also conducts site visits, interviews schools' board of directors, observes board meetings, and collects various additional documents from the schools that are in renewal.³⁵¹ A charter school that seeks renewal must also submit a renewal application.³⁵²

As noted *supra* in Part IV.B.3, the renewal process starts in the spring prior to a renewal decision and culminates the following spring when the Board of Education votes on whether to renew a school's charter or issue a notice of nonrenewal.³⁵³ Once the CSO identifies the renewal cohort to the Board of Education in an executive session, the CSO begins to collect documents from the charter schools in that cohort. Additionally, the CSO schedules and conducts site visits.³⁵⁴ Based on these submissions and on its site visit(s), the CSO generates an ACE-R report.

In recent years, as noted *supra* in Part IV.B.3, the CSO has shared the ACE-R reports with the schools during a "preview window."³⁵⁵ During the preview window, a school may review its ACE-R report for mistakes and ask the CSO to correct any mistakes prior to the ACE-R report's publication. After the preview window, the CSO publishes ACE-R reports on its website. Additionally, as described *supra* in Part IV.B.3, the CSO shares the ACE-R report with the Board of Education in an executive session and presents it at a public Board of Education meeting.

³⁵⁰ See, e.g., The Sch. Dist. of Phila., 2022-23 Charter Schools Office Calendar of Collections, bit.ly/3TEmlY5 (last visited June 19, 2023).

³⁵¹ Some of these additional documents include, for example, mission and educational plans, management and lease agreements, special education student files, student enrollment files, and student health records. See *id.*

³⁵² *Id.*

³⁵³ In recent years, the CSO started hosting Renewal Cohort Kick-Off meetings at the beginning of the renewal process. The purpose of these meetings is to provide an overview of the renewal process to schools that are up for renewal that year.

³⁵⁴ *Id.*

³⁵⁵ CSO Employee #3 explained that over the years the CSO has added additional points when schools get to review their ACE-R reports. Although they could not identify specific dates, CSO Employee #3 explained that at first the CSO had only one preview window in the spring towards the end of the renewal process. Subsequently, the CSO added another preview window in the fall, after it had collected all the data from the schools. Finally, in 2021, the CSO added a third preview window in the summer, during which a charter school may review the initial draft of its ACE-R report.

(d) Criticisms Regarding the CSO's Use of and Formulation of Similar Schools Groups

Interviews of charter school leaders elicited concerns with the CSO's reliance upon SSGs in the evaluation framework. The use of SSGs was critiqued by two SRC members. The Investigation revealed that SSGs were developed in response to the charter sector's criticism of the predecessor "peer groups" which were primarily developed by grouping schools by relative performance. Prior to the development of SSGs, SRC Member #5 recognized the importance of comparing schools to others with similar student populations. Thus, SRC Member #5, when considering the CSO's recommendation not to renew a charter school, would personally compare the at-issue charter school to other schools they deemed to be similar. SRC Member #5 would consider, among other factors, the physical proximity of the possible comparator school to the charter school when deciding whether to utilize it as a comparator. SRC Member #2 also recalled that, prior to SSGs, schools recommended for nonrenewal were compared to other schools on a "case-by-case" basis. Thus, according to CSO Employee #1, the CSO developed SSGs to consistently compare schools whose students are similar, and to have a standard number of schools each charter is compared against.

The CSO uses SSGs when evaluating schools in the "Academic Success" domain of the Framework.³⁵⁶ The CSO evaluates charter schools *vis a vis* the District as a whole as well as with regard to schools in a charter school's SSG, in each of the Academic Success categories except growth.³⁵⁷ Thus, the composition of the SSG is central to the manner in which the CSO evaluates charter schools pursuant to the Framework.

CSO Employee #3 explained that one purpose of an SSG is to account for the percentage of "historically disadvantaged students" in a school population. As set forth *supra*, an SSG is comprised of five schools identified from a group of neighborhood and charter schools that serve the same grades and similar percentages of students living in poverty, special education students, and students who are English language learners.³⁵⁸ "Specifically, schools are included in the SSG if they fall within 10 percentage points of the charter school's poverty rate, 7.5 percentage points of the school's English Learner rate, and 5 percentage points of the school's Special Education

³⁵⁶ The Sch. Dist. of Phila., Similar Schools Groups, <https://www.philasd.org/charterschools/similar-schools-groups> (last visited June 19, 2023).

³⁵⁷ *Id.* Growth is not subjected to SSG group comparison. Rather, for that metric, the Commonwealth produces a rate that compares the performance of the school to students across Pennsylvania. Academic Success, The Sch. Dist. of Phila., <https://www.philasd.org/charterschools/academic-success/> (last visited June 19, 2023).

³⁵⁸ The Sch. Dist. of Phila., Academic Success, <https://www.philasd.org/charterschools/academic-success/> (last visited June 20, 2023).

rate. If there are not at least five schools that meet those requirements” the CSO “expand[s] the ranges until” they “have five similar schools.”³⁵⁹

Many Black charter school leaders whom were interviewed, SRC Member #1, and SRC Member #4 expressed their belief that charter schools should be compared to schools in their same geographic area, which does not necessarily occur when utilizing the SSG as currently comprised. While not all charter schools are limited to recruiting students from their catchment area, one charter leader averred that many charter schools primarily draw students from their neighborhood. Charter leaders explained that, while SSGs may control for relative poverty levels of students, the SSG cannot control for trauma unique to a given neighborhood. For example, one charter leader said that while a student in Northeast Philadelphia may come from a family that is similar socioeconomically, that student does not live in a neighborhood with as much trauma as West Philadelphia, where there is a higher rate of “blight, homelessness, drugs [and] shootings.” The leader noted that coming from an area where trauma is omnipresent impacts learning, as would coming from an area that is a “food dessert” (*i.e.*, an area without easy access to a grocery store).

Several school leaders expressed concern that, based upon the manner in which the SSG is determined, they do not receive credit for the fact that their charter schools outperform District schools that are in the closest proximity to their charter schools. And one charter school leader opined that the SSG for their school would be more appropriate if it consisted of the five schools that their students would be most likely to attend if their school were to be closed.

Yet, those associated with the District largely disagreed that the SSG served as an inappropriate comparator for charter schools. For example, CSO Employee #6 expressed skepticism at the suggestion that a school’s SSG should always include the neighborhood school or schools in its area. And, while this individual agreed that a student’s exposure to violence would impact the student’s performance, they felt that geography is not a reliable indicator of a student’s exposure to violence. Rather, this individual opined that ideally the SSG would account for students’ race, poverty levels, and exposure to violence (irrespective of their neighborhood).

Indeed, CSO Employee #3 did not believe that it was feasible to consider geography when formulating SSGs. CSO Employee # 3 reported that doing so may not actually result in the outcome that charter school leaders have articulated that they desire. For example, CSO Employee #3 noted that if geography was the defining factor of the SSG, then it could result in schools being included in groups that have student populations that are dramatically different than the at-issue charter school. According to CSO Employee #3, this is likely to occur as many wealthier neighborhoods in Philadelphia are in close proximity to poorer neighborhoods, citing Chestnut Hill and Germantown as an example. CSO Employee #3 further expressed concern that if the CSO utilized geography to determine SSGs, the CSO would be inserting subjectivity, and thus a potential for bias into the process, which CSO Employee #3 noted the CSO aims to avoid. SRC Member #6 further expressed concern regarding utilizing geography as a determinative factor when defining SSG. SRC Member #6 stated that because many charter schools admit students

³⁵⁹ The Sch. Dist. of Phila., Similar Schools Groups, <https://www.philasd.org/charterschools/similar-schools-groups> (last visited June 20, 2023).

from throughout the city, and not just within a catchment area, considering geography when defining the SSG is not a good measure of relative success.

In addition, some charter leaders and CSO Employee #6 expressed frustration that SSGs do not take into account the racial demographics of respective schools' populations. These individuals noted that capturing this information is important, as students of color may have unique experiences that are not adequately captured. One charter school leader, whose student body is majority Black, expressed frustration that their SSG includes a majority White school. Additionally, two school leaders felt some schools in their respective SSGs had significantly lower rates of student poverty than their schools, such that comparing their schools to those lower poverty schools was unfair. While the charter leaders did not dispute that their respective SSGs were based on the SSG formula, which accounts for poverty levels, they believed that the formula allowed for schools with too low of a poverty rate to be included in their SSGs.

When confronted with these criticisms, CSO Employee #3 explained that the CSO does not use race in its determination of the SSG because that would be unethical. They explained that SSG attempts to capture factors that can impact student achievement, such as poverty. They also explained that the poverty margin used to calculate the SSG – +/-10% of the charter school's poverty rate – was determined to ensure that every charter school had at least 5 schools in its SSG and that charter schools participated in the creation of the SSG.³⁶⁰

SRC Member #4 and one former charter leader stated that SSGs should not be used at all, but instead suggested that schools should be evaluated based on the academic improvement within their student bodies. CSO Employee #3 reported that there are disadvantages to using improvements within the student body – or growth – as an evaluation tool. CSO Employee #3 explained that, based on the data the CSO has looked at in the past, schools do not generally show growth unless the CSO looks at kindergarten performance. They also explained that looking at growth would incentivize schools, for example high-schools, to decline admissions to students whom charter schools believe are unlikely to grow. Unrelated to the content of the SSG formula, several charter leaders expressed frustration that they did not know the exact formula or code the CSO uses in developing SSGs. CSO Employee #3 explained that there is no SSG formula that has not been disclosed to schools. Rather, a charter school's SSG is based on (1) the grades it serves, (2) poverty rate, (3) special education rate, (4) English learner rate.³⁶¹

(e) Concerns Regarding Modifications to the Framework

Some interviewees from the charter school sector expressed concerns regarding the manner in which the CSO modifies the Framework and how those modifications are communicated to the charter school community. Yet, the CSO does not have the authority to unilaterally modify the Framework. Rather, to institute a change to the Framework, the CSO must first make a recommendation to the Board of Education, which the Board of Education has the power to either

³⁶⁰ The Sch. Dist. of Phila., Similar Schools Group, <https://www.philasd.org/charterschools/similar-schools-groups/> (last visited June 20, 2023).

³⁶¹ See also The Sch. Dist. of Phila., Similar Schools Group, <https://www.philasd.org/charterschools/similar-schools-groups/> (last visited June 20, 2023).

approve or deny. The head of the CSO determines whether a recommendation to modify the Framework is submitted to the Board of Education. CSO Employee #8 acknowledged, however, that neither the charter community nor members of the public are provided with an opportunity to provide input on changes prior to their submission to the Board of Education. And, some interviewed from the charter sector specifically complained about a lack of input in this process. However, while there is no formal opportunity for the charter sector to comment, CSO Employee #8 said the CSO is in “constant contact” with the charter sector and that some proposed modifications to the Framework are in response to complaints received from the sector.

Many leaders from the charter sector expressed frustration that the CSO does not adequately communicate changes to the Framework, and that as a result, schools are penalized for not understanding the manner in which they will be evaluated. For example, one Black charter school leader, who has been a charter school leader since 2019, stated that the CSO will “move [] the goalpost” when conducting annual evaluations. This charter school leader further explained their belief that the CSO changes the evaluation requirements without communicating those changes and then penalizes charter schools for not meeting the updated (and uncommunicated) standards. Another former charter school leader averred that they were not given the metrics under which their school would be evaluated until after the school submitted its application for renewal, which contributed to their poor evaluation and ultimate closure.

Those associated with the CSO, however, disputed these allegations. CSO Employee #8 explained that the CSO presents proposed changes to charter schools at large gatherings of charter leaders, known as “sector convenings.” CSO Employee #7 reported that sector convenings generally occur twice a year. However, this employee stated that during the 2021-22 school year, there was only one such meeting. According to this CSO staffer, the CSO communicates changes to the Framework in a sector convening a year before any change is to go into effect. Additionally, this CSO Employee #7 stated that each year the CSO provides information on any changes to the Framework to be used that year, as well as information regarding how the changes will be applied. Further, CSO staffers reported that the CSO also communicates changes to the charter sector through the CSO’s monthly newsletter as well as through CSO-webinars specific to the Framework.³⁶² While some interviewees from the charter sector acknowledged some of these efforts, others found them to be insufficient. For example, one Black charter school leader reported that the CSO’s recent addition of office hours were a helpful tool to better understand the Framework. This charter leader, however, expressed concern regarding the limited number of office hours that were available.

³⁶² Notably, the allegations regarding lack of notice provided to the charter sector regarding proposed changes to the Framework were not presented to the Investigation Team as related to the race of the charter school’s leader. Interestingly, however, one CSO staffer reported that they had developed, during COVID, additional resources to help educate and train BIPOC and independent charter school leaders on the Framework and the changes made thereto. These resources are now made available to all charter school leaders.

(f) Concerns Regarding the CSO's Ability to Utilize Discretion within the Framework

One common criticism of the Framework, echoed by nearly all interviewees from the charter sector, was that it permitted the CSO to utilize its discretion and a perception that the CSO did not do so fairly. Those associated with the District, however, were generally steadfast in their belief that evaluations utilizing the Framework were objective. However, SRC Member #4 acknowledged that the Framework was not entirely objective, stating that there is “no way to be clearly objective 100% of the time.” Rather, SRC Member #4 noted that the evaluation of charter schools is in “some ways . . . subjective work.”

One former charter leader described the CSO's exercise of its discretion as “nit picky.” For example, the charter leader stated that the failure to ensure certain documents are signed or properly filled out can result in points lost in an ACE-R Report, which this charter school leader felt should not be a meaningful enough error to result in points lost in a renewal evaluation.

Two charter school leaders expressed concern regarding the subjective nature of the CSO's evaluation of charter school policies. One charter school leader provided an example of when the CSO determined one policy to be compliant, yet another, identical policy, to be noncompliant. A second charter school leader recalled their school's policy being found compliant in one evaluation cycle but not the next, despite no intervening change in law of which the leader was aware.³⁶³ One charter school leader attributed these outcomes to a lack of “interrater reliability,” meaning that different reviewers in the CSO may come to different conclusions regarding the compliance of a policy. In response to this allegation, one CSO staffer stated that often, but not always, the CSO employs a quality control of sorts; a second CSO staffer in the CSO will review another's determination that a policy “does not meet” a standard. The Investigation was not able to confirm or refute these allegations.

CSO Employee #7 acknowledged that, historically, the CSO has employed discretion in deciding whether certain data within the Organizational Compliance domain should be weighed more heavily in deciding whether overall a school meets or does not meet expectations. For example, this individual reported that CSO staffers would decide whether a school's recent improvements in a given standard should weigh in favor of finding that it met the standard for a category. One current charter school leader believes, however, that this discretion is inconsistently applied. The leader's understanding is that a school that fails the same number of standards as another school may receive a lower overall domain score if the CSO finds that the school fails one of the standards “egregiously,” which is subjective. The CSO believes it has somewhat lessened the discretion applied in judging category and domain rankings with its recent implementation of the Business Rules, which give guidance to CSO staff as to how to choose overall rankings.

5. Allegations that the CSO Applies its Metrics Unevenly

Two school leaders in the AACSC stated that Black-led charter schools receive lower overall Organizational Compliance ratings when they otherwise perform similarly to White-led schools;

³⁶³ The leader did not elaborate if there had been an intervening change in the Framework.

they based their statements on their respective analyses of ACE-R reports compiled by the CSO. To conduct their analyses, both leaders compared their school's ACE-R report to the ACE-R reports of other schools either in their respective renewal cohort or from a previous year. The analysis showed that their schools and the comparator schools failed to meet a similar number of Organizational Compliance standards under certain categories but nonetheless received lower overall category and, consequently, domain ratings. One of these analyses was conducted for a school in the 2019-20 renewal cohort ("Analysis #1") and one for a school in the 2020-21 renewal cohort ("Analysis #2;" collectively the "Analyses").

Both Analyses used similar methodologies.³⁶⁴ Each school leader counted the number of standards their school failed to meet – identified on the ACE-R report with an upside-down triangle – under each category in the Organizational Compliance domain and compared that number to the number of standards the comparator schools failed to meet under the same category.³⁶⁵ The two school leaders conducted this analysis with regard to other schools either in the same renewal cohort or to schools that went through renewal in a previous year. The Analyses compared data from their embargoed (meaning not final) ACE-R reports to the data from comparator schools' publicly-posted ACE-R reports.

These Analyses identified alleged discrepancies in the ratings – schools that failed to meet a similar number of standards under some of the Organizational Compliance categories received different category and, potentially, overall domain ratings. For example, the Analyses alleged that although two schools may fail the same number of standards in a category, albeit sometimes different standards or for different reasons, the CSO has at times assigned different category ratings to the two schools. In other words, one school might receive a "Does Not Meet Standard" category rating, while the other receives an "Approaches Standard" rating despite failing to meet the same number of standards.

One of the school leaders attributed these alleged differences to a "pattern of favoritism" within the CSO that leads to a systemic bias. This charter school leader believed that their school received a lower rating than did similarly situated White-led schools. The school leader further explained that after they shared their analysis with the CSO, the CSO made changes to the school's final report. Although this did not impact the school's overall renewal recommendation, the leader noted that this analysis was a considerable undertaking that required a significant investment of

³⁶⁴ Since neither Analysis explains its methodology, the Investigation Team cannot determine every way in which the methodologies differ. One difference that is apparent, however, is that Analysis #1 compared data from its embargoed ACE-R report to the data (*e.g.*, the ACE-R reports) of schools in the renewal cohort from the previous year. Analysis #2 on the other hand, compared data from its embargoed ACE-R report to the data of schools in its renewal cohort and schools that went through renewal in a previous year.

³⁶⁵ As described *supra*, in Part IV.B.4, each domain, including Organizational Compliance, contains categories and each category contains standards. The CSO assigns each category a rating based on its evaluation of standards within that category. Organization Domain category ratings are used by the CSO to calculate schools' overall Organizational Compliance domain rating. As a result, any inconsistencies in the CSO's determination of a school's category rating may impact that school's overall Organizational Compliance domain rating.

resources that they typically did not have available.³⁶⁶ Thus, the charter school leader asserted that the amount of work that was required of the charter school to conduct this analysis was beyond what should be required of any charter school. This charter school leader also alleged that even when such mistakes do not impact the school’s renewal recommendation, they nevertheless cause serious harm to the school, its leaders, and their reputation.

CSO employees largely disputed these allegations during the Investigation. They uniformly reported that the CSO implemented various methods to ensure consistent and uniform application of standards. They explained that removing the amount of subjectivity in the charter renewal process was the motivating factor behind the creation of the Framework. According to CSO Employee #3, CSO staff would review each other’s work, especially if a school was to receive a “Does Not Meet Standard” rating. Additionally, CSO Employee #3 explained that prior to 2021 (when the CSO developed its Business Rules), the CSO had internal rules that described the CSO’s method for determining a charter school’s category rating within the Organizational Compliance domain. According to CSO Employee #3, these rules prevented CSO staff from exercising the type of discretion that would lead to inconsistent results. Finally, CSO Employee #3 explained that comparing ACE-R reports from two different years may not be a true apples-to-apples comparison because the Framework changes from year-to-year. Nonetheless, CSO Employee #4 noted concern, stating that even if the Framework were to be fair, “when you put a fair Framework in an inequitable system, you are not going to get fair [results.]”

While the Analyses compared the number of upside-down triangles or failure marks that schools received on their ACE-R reports in each Organizational Compliance category to comparator schools, different standards have a different impact on the overall category rating and, consequently, the overall domain rating. Additionally, the underlying reason for a school’s failure to meet a standard may be a decisive factor in that category rating. Some failures, for example, may result in an automatic “Does Not Meet Standard” rating for that category. Plainly, it matters which standards the school fails to meet and the underlying reasons for its failure. Merely counting standards that a school fails to meet is, therefore, not an effective way of comparing one school’s performance to another under the Framework.

Moreover, both leaders used *White-led and Black-led schools* as comparator schools, which, according to the Analyses, received better category ratings than their schools despite getting the same number of upside-down triangles in a given category. Even assuming the methodology for counting ratings was appropriate, asserting that other similarly situated Black-led schools received better outcomes does not substantiate a claim of bias against Black-led schools. Based on the above, the Investigation did not substantiate the claim that these particular Analyses showed bias related to the race of the school’s leadership or founders.

At the same time, the Investigation revealed that, during the majority of the Relevant Time Period, the District did not provide the general public or the charter school sector with information to determine whether the CSO’s evaluation of charter schools’ Organizational Compliance led to

³⁶⁶ This school leader reported that they were able to utilize support from a family member who was not a school employee to conduct this analysis.

inconsistent or discriminatory results.³⁶⁷ First, no one interviewed from the CSO could point to an internal policy or a set of rules that confirmed the CSO's alleged practice of double-checking each other's work. Similarly, the CSO could not point the Investigation Team to a policy or a set of documents that explained the CSO's Business Rules prior to 2021.

Without reviewing the reasons for each school's failure to meet an Organizational Compliance standard and without then applying the Business Rules (which did not exist prior to 2021) to determine the Organizational Compliance category rating, there is no way to accurately compare one school's evaluation to another. And for years prior to 2021, the CSO did not provide this information to the public or to the charter school sector. This lack of transparency and complexity in the CSO's Framework presented hurdles for the public to hold the CSO accountable, as explained in Part IV.B.3(c). Moreover, any lack of transparency may lead those involved in the process to speculate regarding the motivations behind the CSO's actions, which leads to an environment of mistrust and antagonism between the charter school sector and the District.

C. Specific, Individual Allegations of Intentional Discrimination Raised During the Course of the Investigation

In addition to the systemic issues identified above, the Investigation also revealed individualized allegations that the District: (1) treated certain Black charter school leaders unfairly when considering charter modification requests; (2) improperly recommended some schools for nonrenewal during the COVID-19 pandemic; and (3) otherwise treated some Black charter leaders unfairly either due to their political beliefs or their race.

1. *Alleged Inappropriate Denial of Requests to Relocate or Expand Black-led or Founded Charter Schools*

Two Black charter school leaders whom were interviewed alleged that they were improperly denied requests to relocate their charter school buildings due to their race. Two other Black charter school leaders alleged that the Board of Education improperly denied their request to expand their enrollment cap.

Under the Charter School Law, a school's physical location is determined as part of the application process and thus, is likely included in the school's charter.³⁶⁸ Conversely, charter schools are generally not subject to enrollment caps. However, pursuant to the Charter School Law, a charter school and a board of education may agree upon and include an enrollment cap as part of its written charter.³⁶⁹ Once a school's charter application is granted, the negotiated charter "is the legally

³⁶⁷ In 2021, the CSO shared its Business Rules with the charter sector only. Thus, in 2021 charter schools could theoretically conduct this evaluation using Business Rules. But the general public still could not.

³⁶⁸ 24 P.S. § 17-1719-A.

³⁶⁹ *Id.* at § 17-1723-A(d)(1).

binding agreement between the chartering school district and a charter school.”³⁷⁰ Thus, the school is contractually bound by the charter’s terms, which includes the school’s physical location and an enrollment cap, to the extent these items are included within the charter agreement.

The Charter School Law does not regulate amendments to charters.³⁷¹ Thus, the CSO reviews amendment requests at its discretion.³⁷² In reviewing amendment requests, the CSO differentiates between two types of charter amendments: nonmaterial (minor) or material (significant) changes. “Material amendments to a school’s charter include the following: a change to grade levels served; a change in building location or the addition of a new facility; a name change; a significant change to a charter school’s mission, program, or educational plan; an enrollment expansion; or a change to the charter management organization.”³⁷³ For material charter amendment requests, the CSO prepares “a Charter Amendment Evaluation Report and make[s] a subsequent recommendation to the Board.”³⁷⁴ The Board of Education ultimately must approve any material change to a charter agreement. And, although unclear from the CSO’s website or policies, per CSO Employee #3, minor charter amendments only require that a charter school notify the CSO; the CSO need not approve such a change.

(a) Requests to Relocate or Expand Grades Served

Two Black charter school leaders reported that they had faced difficulty obtaining the Board of Education’s approval of requests to relocate and/or expand the grades served by the school. We detail each of these allegations in turn.

(i) Allegations Raised by School #1

One school leader reported that, in 2019, they sought to move their school to a new location because their school’s building was in poor condition. Specifically, this school leader reported that the building had mold and asbestos present. To facilitate the move, the school leader applied to the CSO for a charter amendment. The charter leader said they initially received “a relocation report” with positive marks in every category.³⁷⁵

³⁷⁰ Pennsylvania Dep’t of Educ., *Basic Educ. Circular: Charter Schools* (Mar. 31, 2020), <https://www.education.pa.gov/Policy-Funding/BECS/Purdons/Pages/CharterSchools.aspx>.

³⁷¹ School District of Phila., CSO, *Charter Amendments*, <https://www.philasd.org/charterschools/amendments/> (last visited June 20, 2023). Although the Charter School Law does not provide for amendments to a charter, the Board of Education permits charter schools to amend their charters in certain circumstances. *Id.*

³⁷² *Id.*

³⁷³ *Id.*

³⁷⁴ *Id.*

³⁷⁵ The school leader was likely referring to a “Charter Amendment Evaluation Report.”

This school leader reported that the Board of Education was scheduled to first consider the school's request to relocate at a certain Board of Education meeting in 2019 ("2019 Board of Education Meeting"). Shortly before that meeting, the school leader reported that they were invited to a meeting at a State Representative's office. The school leader relayed that they attended the meeting with a member of their school's board. Residents of the neighborhood where the school leader sought to move were also present. The school leader reported that these residents stated that the school's move would be "a threat to their White community." According to the school leader, the residents reported their concerns to CSO Employee #2, who found the complaints to be very offensive.

At the 2019 Board of Education Meeting, the school leader reported that these residents attended and presented a petition containing 700 signatures of individuals who did not want their school in their neighborhood. As a result of the presentation, the school leader reported that relocation request was tabled.

The school leader reported that after the 2019 Board of Education Meeting, no one from the CSO contacted them for about two months. The school leader stated that two months after the 2019 Board of Education Meeting, CSO Employee #3 and two other CSO employees called them and stated that if the charter leader relinquished half of the school's enrollment, the CSO would recommend approving the school's new building. According to the charter leader, they were not provided with a rationale for the request, which they declined.

After some time passed, the school leader reported that they contacted the CSO to obtain an update on their relocation request. According to the school leader, CSO Employee #3 told them that they would have to start the approval process over again. The school leader questioned why that was necessary. According to the school leader, CSO Employee #3 informed them that this was the Board of Education's decision.

The school leader reported that when they began to complete the process a second time, there were additional and new requirements. For example, the school leader was told that they could not obtain approval for the move unless they had a letter of support from City Council. The school leader asked a CSO representative whether any other schools had been required to obtain such a letter and was told that every school applying to relocate had to do so. The school leader reported that the City Councilmember they approached was both hesitant and confused by the request. However, the school leader obtained the letter. After sharing the letter with the CSO, the school leader reported that the CSO told them they had to get a letter from another City Councilmember as well, which they did.

The school leader reported that in March 2020, after completing a second application, they and their school's board president met with CSO Employee #2, CSO Employee #3, and CSO Employee #4. According to the charter leader, during this meeting, CSO Employee #3 told the charter leader that the CSO was not going to approve the school's move because of parent complaints. After the school's board president pushed for more information regarding these complaints, CSO Employee #3 was only able to produce complaints from three parents. The school's board president then threatened to inform the media about the issues that the school was having with its application to relocate. The school leader reported that after the school's board president made this statement, CSO Employee #3 conceded that the Board of Education was going to have to approve the

application because the “optics were bad.” Ultimately, however, in 2020, the Board of Education approved the charter school’s request to relocate.

CSO employees largely disputed the school leader’s version of events, as did members of the Board of Education. For example, Board of Education Member #1 stated that CSO Employee #3 advocated on behalf of the charter school and in support of its relocation.

The Investigation Team asked CSO Employee #3 whether they ever told the school leader that the Board of Education’s approval of the relocation request was contingent upon the school’s agreement to reduce its enrollment. CSO Employee #3 acknowledged that they had discussed a reduction to the school’s enrollment with the school’s leader, but stated that they contacted the school leader to suggest a decrease in enrollment because the school’s resources were spread thin. CSO Employee #3 denied, however, that they stated that the Board of Education’s approval of the request was contingent upon such a reduction.

The Investigation Team further asked CSO Employee #3 whether the CSO had required the school leader to obtain letters of support from members of City Council as part of the application process. CSO Employee #3 explained that it was the responsibility of the charter school leader seeking to relocate their school to demonstrate community buy in and support. As such, nearly every school seeking to relocate has obtained a letter of support from a local member of City Council as evidence of support. CSO Employee #3 noted, however, that such a letter was not a requirement. When asked how schools demonstrate community support when seeking a charter amendment to move their school’s location, CSO Employee #8 reported that there was no one way in which schools established engagement with the prospective community. Rather, according to CSO Employee #8, ultimately, the onus is on the school to demonstrate community and parent engagement.

Lastly, CSO Employee #3 did not recall meeting with the school leader in March 2020, noting that their time in March 2020 was largely devoted to responding to the COVID-19 pandemic.

The Investigation revealed that one of the CSO’s earliest draft reports evaluating the charter school’s proposed move was drafted in February 2019. That draft proposed recommending approval of the relocation request, as did all other draft reports leading up to the 2019 Board of Education Meeting. Indeed, the final report that the CSO provided in advance of the 2019 Board of Education Meeting recommended approving the school’s request to relocate.

The Investigation further corroborated that a meeting occurred the month of the 2019 Board of Education Meeting at the local state representative’s office. In attendance were the charter school leader and members of the community to which the school sought to move. The day after the meeting, the school leader summarized the meeting in an email to CSO Employee #3 and other CSO employees. That email, however, does not indicate that the concerns raised by those from the school’s new neighborhood were racially motivated. Rather, the school leader reported that the community’s articulated concern regarding their school’s relocation was that it might negatively impact the neighborhood’s District-run school. Additionally, prior to the 2019 Board of Education Meeting, when the charter school’s relocation request was considered, the charter school’s prospective neighbors were vocal in their opposition to relocation. In fact, some neighbors circulated a petition that opposed the school’s relocation. Various District employees,

including CSO Employee #2, saw the petition. The petition, however, did not reference race as a reason for the neighborhood's opposition. Rather, the petition, which garnered over 600 signatures, instead referenced concerns about traffic and safety, and the impact upon the neighborhood and environment.

A review of the minutes from the 2019 Board of Education Meeting revealed that the Board of Education determined not to render a decision on the charter school's request to relocate at that time. The minutes note that the CSO's report to the Board of Education provided "a very clear picture on the strengths and weaknesses of [the charter school's] amendment requests." Thus, the Board of Education noted that a delay in rendering a decision was necessary to "gain additional information[.]" specifically regarding "community outreach, traffic/bus routes, and enrollment trends."

Consistent with the charter school leader's account, the Investigation did not reveal any written communications from the CSO to the charter school leader regarding the school's relocation request for the two months following the 2019 Board of Education Meeting.³⁷⁶ Nor did the charter school leader request any updates regarding their school's relocation requests via email during this period. Yet, contrary to the charter school leader's account, two months after the 2019 Board of Education Meeting, the CSO had regular communications with the charter school concerning its request to relocate and the documentation that would be needed to support its application to be submitted the following year. CSO staff who communicated with the charter school leader explained that they required updated documentation for information that changes year over year, for example the school's annual budget.

Further, the Investigation revealed that three months after the 2019 Board of Education Meeting, the CSO's draft reports analyzing the charter school's relocation request recommended that the Board of Education take no action on the charter school's proposed move. The CSO's recommendation in these drafts was based upon its determination that the school had not demonstrated: (i) sufficient preparation for an enrollment increase; (ii) a contingency plan in case of relocation delays; or (iii) support from current families and staff members for the move. While the drafts mention that there were concerns from the public regarding the move and a "lack of communication to the school community[.]" these concerns, according to the drafts, were also from "parents of children currently enrolled in the Charter School[.]" The drafts do not reference the race of the students or the school's leadership.

Around this time, CSO Employees #2 and #3 had an email conversation in which they expressed that they both had outstanding concerns about the school's relocation request. Thus, despite the charter school leader's assertion that CSO Employee #3 was alone in opposing the relocation request, the Investigation reveals that the CSO's decision not to support the charter school's relocation request was not made by a single CSO employee. Rather, both CSO Employee #2 and CSO Employee #3 were in agreement on the recommendation.

³⁷⁶ Although the Investigation revealed a communication from the charter school to the CSO during this period, this communication was unrelated to the relocation request. Rather, in that communication, the charter school informed the CSO of its anticipated start and end dates for the upcoming school year.

And, although the charter school leader reported that there was a March 2020 meeting between their charter school's leaders and the CSO, the Investigation was unable to independently corroborate that meeting. Yet, the Investigation did reveal that in March 2020, the CSO revised its draft report to the Board of Education to once again recommend that the Board of Education approve of the move. At the same time, news reports indicate that on March 9, 2020, the school leader attended a local community meeting to discuss the school's proposed relocation. According to that report, neighbors voiced concern that students from the school might behave like students from another charter school, which had previously occupied the proposed location. The neighbors stated that students who attended the former charter school had been "disrespectful." While the two charter schools were not associated, both had Black leaders and majority Black student bodies.

The Investigation revealed, however, that the first allegations regarding racial bias in this school's request to relocate were made over a year after the request was initially considered in 2019. In a letter dated April 28, 2020, the school leader wrote to CSO Employee #2 that they had "kept silent as to not add fuel to a raging fire caused by" the local community group members opposing the school's relocation. In that letter, the charter school leader described the meeting held the year prior, writing "[d]uring this almost two-hour meeting we were talked down to and berated for having the audacity to open a school in [the neighborhood]." The charter school leader further wrote that one of the community leaders stated that their charter school was "a threat to the White community" and that "[n]o one in the room found issue with this dialogue." Additionally, the letter asserted that the state representative took the side of the community members. Furthermore, the letter alleged that the school leader had been called on their personal phone and harassed by individuals opposed to the move. The same day that the charter school leader wrote CSO Employee #2, one of the community members who attended the meeting also submitted an email to the Board of Education's general mailbox. The individual stated that "[t]he only meeting between representatives of the school and us was last year and was held in front of State Representative [] who would have never tolerated any such language. I had no idea things could get this 'dirty.'"

In a letter dated April 27, 2020, a consultant for the charter school also wrote to CSO Employee #2. Like the letter from the school's leader, this letter also asserted that racial bias was at play in the community's opposition to the school's request to relocate. For example, the letter noted that "[u]nfortunately, the fact the opposition focuses on the 'types of students' creates the appearance that 'types of students' equates to middle-school and high-school aged minority students." The letter further alleged that community members interfered with the charter school's attempts to engage the neighborhood by, for example, threatening to call law enforcement or to bring trespassing charges against charter school employees who were attempting to distribute flyers to residents.

At a certain Board of Education Meeting in 2020 ("2020 Board of Education Meeting"), the Board of Education considered the CSO's recommendation to approve the school's request to move locations. Per that meeting's minutes, "the Board received written comments from forty-seven (47) individuals expressing opposition of Action Item No. 4 . . . Request for Charter Amendment. One of the written comments in opposition included a petition signed by 613 individuals." In addition, the minutes reflect that four different individuals spoke in opposition to the charter school move amendment. Later in the meeting, a majority of the Board of Education voted in favor of the charter amendment and location changes (by a 5-4 vote). The concerns regarding racial bias

raised by the charter school leader were not reflected in the meeting minutes. Nor were any issues related to the race of the school's student population and/or leadership.

Ultimately, the Investigation found that the CSO and the Board of Education were not made aware of allegations of racial bias before the 2019 Board of Education Meeting. And, although the Board of Education's decision at that time not to render a decision on the request to relocate may have been due in part to community resistance, there is no evidence that this resistance was linked to racial bias. Further, the Investigation revealed that there was limited communication between the CSO and the charter school throughout the spring of 2019. According to the documents, the CSO decided to "push" its decision on the proposed relocation to the following year based upon a lack of information that CSO Executives believed was necessary to evaluate the request and uncertainty about the feasibility of the move's timeline. While it is possible that the community's opposition could have been grounded in racial bias, as evidenced by their complaints about students who had attended a different charter school at the same location, it was not until just days before the 2020 Board of Education Meeting that the charter school leader first raised allegations of racial bias to the CSO. Just days after these allegations were first made, the Board of Education voted to approve the relocation request, in accordance with the CSO's recommendation. Thus, the Investigation revealed no objective evidence that the District's actions with regard to the manner in which it adjudicated this charter school's request to relocate were motivated by intentional racial bias.

(ii) Allegations Raised by School #2

Another Black charter school leader alleged that the CSO's communications with its banker negatively impacted its ability to attain funding to expand the school's facilities. Specifically, this charter school leader asserted that, at the time of their interview with the Investigation Team, they were expanding their school's facilities at their current location. The school leader stated that they sought financing from a bank to fund the expansion. According to the school leader, a representative from the bank reached out to CSO Employee #3 and CSO Employee #3 told the bank that the charter school was "the worst school in its cohort." The charter school leader said this statement is untrue, but nevertheless "blew the project out of the water."

A review of documents revealed that in April 2021, a banking institution reached out to CSO Employee #3 and another CSO staffer to ask about the charter school, as well as other charter schools. A meeting between the bank, CSO Employee #3, and the CSO staffer occurred that same month. In early May 2021, a representative from the bank reached out again to ask about the renewal recommendation for the charter school and also to inquire whether "additional debt plans would require a material revision of the charter." CSO Employee #3 responded that there was "[n]o update" as to renewal and with regard to "additional debt plans, a school wouldn't need to request an amendment. It is the case, however, that new financial commitments are typically coupled with other material changes that do require amendment requests (eg [sic] enrollment, facility)." In June, the bank representative followed up on the status of the school's renewal recommendation. On June 8, 2021, CSO Employee # 3 directed the bank to the presentation the CSO made to the Board of Education during a May meeting. While that presentation, dated May 27, 2021, listed recommendations for twelve of the thirteen schools identified in the cohort, it did not list a renewal recommendation for the charter school about which the bank was inquiring. Rather, for this charter school the presentation simply stated "evaluation ongoing."

That same day, the bank representative inquired as to when there would be an update from the CSO on the school's status, noting that the presentation did not contain a recommendation on renewal. After receiving no response, a month later, on July 7, a different bank representative followed up. In response, CSO Employee #3 said that there was "no status update on [the CSO's] end" regarding a renewal recommendation for the school. CSO Employee #3 further indicated that they could not provide a timeline for when the CSO's evaluation of the school would be complete. On August 2, the bank representative again followed up with the CSO and CSO Employee #3 regarding the status of the school's charter renewal request. The bank representative wrote that "[t]hrough our conversations with management [at the school] they indicated that you granted them a 5 year renewal." The bank asked for the CSO to confirm that this was true and for information regarding when the actual renewal notification would be publicly available. In response, a CSO staffer wrote that "[t]he school has not been granted a 5-year renewal and we do not have a timeline for renewal being presented to the Board of Education."

In September 2021, the charter school leader emailed CSO Employee #4 to raise concerns about delays in its renewal report, alleging "significant differential treatment in the process . . . when compared to many other schools in our cohort." To be clear, the charter school leader did not allege that the differential treatment was based on their race. The charter school leader requested a meeting with the CSO to discuss the current status of the school's renewal request. CSO Employee #4 responded to the charter school leader two days later, writing "[f]irst and foremost, we apologize for any delays in our responses to the school and for not meeting any anticipated timeline that was communicated. Our intentions are always to work collaboratively with [your school]." CSO Employee #4 then committed to sharing a draft report with the school by September 28.

Although CSO Employee #4 agreed to provide the school with a draft report by September 28, 2021, the bank representative once more reached out to the CSO in November 2021 to obtain an update regarding the school's renewal status. In response, CSO Employee #2 responded that "there are no updates that we are able to provide regarding" the school. As of the date of the Report, the CSO has not published a final 2021 renewal report for the charter school.

CSO Employee #4 attributed the delay in issuing a renewal report for this charter school to an audit issue that the Office of Auditing Services ("OAS") uncovered while reviewing the school. According to CSO Employee #4, OAS found that the school had double-counted students and, consequently, the District had provided the school with significant funding to which the school was not entitled. The CSO staffer characterized this as a "major finding." CSO Employee #4 alleged that after the OAS made this finding, members of the CSO's staff had multiple meetings with the school's leadership before resolving it. As a result, CSO Employee #4 reported that the school's renewal report had been delayed.

None of the documents reviewed confirmed the charter school's allegation that the CSO informed the school's bankers that the school was the "the worst school of its cohort." Nonetheless, it is clear from the documents that the school's bankers made numerous attempts over the summer of 2021 to obtain information regarding the school's renewal recommendation. And, in response to these requests, the CSO had provided no insight into the status of the process. The CSO's messaging was clear: there were no updates and no timeline could be provided as to when the bank could expect to receive this information. Thus, it is plausible that the CSO's responses to the

banker's inquiries may have negatively influenced the school's ability to attain financing. Ultimately, the Investigation revealed no evidence that the CSO's delays in providing information to the bank regarding the school's renewal process were influenced by a racial bias.

(iii) Amending Charters to Expand Enrollment Caps

During the course of the Investigation, two Black charter school leaders reported difficulty in obtaining approval from the District for an increase to the enrollment caps contained in their respective charter agreements.

A modification to a charter's enrollment cap is an important type of charter amendment, as the District can decline to provide funding for students enrolled above its cap. Where a school has enrolled students above its charter's enrollment cap, however, it may appeal to the Pennsylvania Department of Education ("PDE") for funding. If successful, PDE pays the charter school directly, and withholds those sums from its payments to the District.

This can result in protracted litigation with the District. For example, from 2007–10, Walter D. Palmer Leadership Learning Partners Charter School "consistently enrolled more than the 675 students permitted" by its charter. In turn, the District provided funding for only the 675 students contemplated by the charter's enrollment cap. The school asserted that it had been underpaid and requested that PDE pay it \$1,678,579 and withhold the same amount from the District's funding. PDE complied with the request. After a lengthy appeals process, the Pennsylvania Supreme Court found against the school and awarded the District a \$1.5 million judgment. Overall, for schools that seek to enroll students above their enrollment cap, the process to seek money directly from PDE or appeal a denial of such a request can be costly. Therefore, obtaining the Board of Education's approval of an enrollment expansion, and then the memorialization of the request in the school's charter, prevents schools from having to engage in this process and provides clarity regarding a school's funding.

CSO staffers echoed the importance of enrollment expansion requests. CSO Employee #4 explained that some schools that rely upon per-pupil funding (as opposed to other sources of funding such as grants or fundraising efforts) must seek expansion to keep the school running. This same staffer explained, however, that if a school requests an expansion in the middle of a charter term, the Board of Education may simply choose not to take any action. And, the Board of Education is not required to provide any reasoning for its decision. However, where a school requests additional enrollment as part of the renewal process, the CSO might provide its opinion regarding whether the Board of Education should grant the request within the renewal report.

One Black charter school leader reported that, for over a decade, they unsuccessfully sought an increase to their enrollment cap.³⁷⁷ Specifically, this charter leader reported that about ten years ago, with the District's approval, the school moved to a new facility. According to the charter leader, to be able to afford the new site, the school required a 300-seat increase in its enrollment cap. However, the District denied the school's request for an enrollment cap increase. Given the need for additional enrollment to support its operations, the charter school leader reported that the

³⁷⁷ This same school reported that the CSO's communications with their bank interfered with their ability to attain financing of their school expansion, as detailed in Part IV.C.1, *supra*.

school was forced to enroll students above its cap. After the request to increase the school's enrollment cap was denied, the school appealed to PDE in order to obtain funding for those students enrolled above the cap. The charter leader reported that they have continued to seek the Board of Education's approval for an increase to its enrollment cap without success. And, the charter leader reported that they have never received an explanation as to why their request has been denied. Further, the charter leader stated that the treatment of their request was in sharp contrast to the treatment of White-led schools, which the charter leader contended have received numerous increases to their enrollment caps over the past ten years.

In a November 2022 presentation, the AACSC asserted that only 17% of enrollment cap expansion requests from 2017 through 2021 were granted to Black-led schools.³⁷⁸ The CSO has also analyzed whether there were any racial disparities in its evaluation of enrollment caps. In an internal briefing, the CSO noted that it had received 24 amendment requests from charter schools seeking an increase in their enrollment cap. Of those requests, 15 had been approved, with no action taken on the remaining. The CSO's internal briefing noted that only three of the nine schools that were denied an expansion request were Black-led, according to the District. Thus, the CSO concluded that "the percentage of charter schools with BIPOC leaders that apply for enrollment increases is the same as the percentage of schools that receive enrollment increases."

Thus, the Investigation did not corroborate the AACSC's allegation that expansion requests are disproportionately granted to White-led schools. However, the District did not provide the Investigation Team with requested data regarding the number of requests for the Relevant Time Period, although the Investigation Team understands from the District that the data was not feasible to compile in the timeframe requested. As such, the Investigation Team's analysis is not complete.

When asked about this charter school's request to increase its enrollment cap, CSO Employee #1 reported that they could only recall that this school had enrolled more students than permitted pursuant to its charter. CSO Employee #1 could not recall any other details regarding the request.

A review of the documents supports the charter school leader's allegation that they have long sought an increase to their school's enrollment cap without success. For example, in April 2021, the charter leader sent a letter to CSO Employee #2 requesting an increase to their school's enrollment cap by 300 students. In that letter, the charter school leader expressed disappointment that their prior requests for enrollment cap increases were not granted, reciting their previous unsuccessful attempts. The leader expressed that they were "dishearten[ed] . . . to see that during that same renewal period, several other schools were granted additional students in much greater numbers than what we were requesting." CSO Employee #2 confirmed receipt of the letter, but did not acknowledge the truth or falsity of the allegations in the letter. The Investigation Team could not, however, locate documents discussing prior enrollment expansion requests.

The Investigation further revealed that while some schools that the school leader referenced, including a group of schools managed by a large CMO, were granted enrollment cap expansions during the Relevant Time Period, these requests were not rubber-stamped. For example, in the 2017-18 school year, the CSO recommended that the SRC deny that CMO's school's request to

³⁷⁸ 2022 AACSC PowerPoint Presentation.

increase its maximum authorized enrollment. Additionally, at least one of the enrollment cap increases approved for one of that CMO's schools was relatively minor, of just 50 students.

Thus, the Investigation Team does not have sufficient information to conclude whether or not the Board of Education's failure to grant this charter school leader's request to increase its enrollment cap was inappropriate or whether the denial of this specific request was linked to a racial bias.³⁷⁹

2. How Renewal Would be Handled in Light of the COVID-19 Pandemic

Another specific allegation made by the AACSC prior to and during the course of this Investigation was that the CSO unfairly departed from the announcement it made during the COVID-19 pandemic that it would not recommend nonrenewal for any school in the 2020-21 renewal cohort or the 2021-22 cohort.³⁸⁰ During the course of the Investigation, several Black charter school leaders echoed this allegation. One Black charter school leader explained that in 2020, the CSO hosted a meeting with the entire charter school community. According to this Black charter school leader, CSO Employee #2 led the meeting and stated that the CSO would not make any recommendations for nonrenewal for any school in the 2020-21 or 2021-22 renewal cohort due to the impact of COVID-19. While outside the Relevant Time Period of the Investigation, the charter school leader stated that they believed, based on these statements, that the evaluation of their school would be a mere formality during the 2021-22 renewal cycle. The CSO leader was then surprised when the CSO ultimately gave the school a negative evaluation that led to the Board of Education voting to initiate nonrenewal proceedings.³⁸¹

A different Black charter school leader and their attorney noted that in April 2021, the CSO said that, given the once in a lifetime COVID-19 pandemic, it would not close schools. According to these individuals, the CSO promised to adjust the framework to account for the impact of the pandemic. Those individuals stated that contrary to this representation, the Board of Education voted to non-renew schools.

CSO staffers denied that any such commitment, however, was made. CSO Employee #2 stated the CSO never promised that it would not recommend any schools for nonrenewal during this time period. Rather, CSO Employee #2 explained that the purpose of the CSO's statement was to put schools on notice that, in light of the pandemic, the renewal process might be changing, which could result in a delay to the typical authorization timeline. In other words, CSO Employee #2 reported that the CSO never made a decision not to make decisions on renewal during this period. Rather, CSO Employee #2 explained that because of the COVID-19 pandemic, the CSO was

³⁷⁹ Conversely, at least one Black charter leader reported no issues with seeking an enrollment cap expansion. The Black charter school leader stated that while they did not work at their charter school at the time, they were not aware of any issues when their school sought both a relocation and significant enrollment cap increase.

³⁸⁰ 2022 AACSC PowerPoint Presentation.

³⁸¹ The renewal report did not recommend that the Board of Education take any particular action with regard to the school, but did indicate that the school did not meet the standards in any of the three domains.

unable to collect the data it would normally utilize to formulate its ACE-R report. As such, CSO Employee #2 reported that the CSO had to adapt in real time, and thus, the CSO's goal was to acknowledge that they were without data that they customarily relied upon in evaluating schools. Nonetheless, the CSO fully intended to continue to hold schools accountable because of its role in assisting the Board of Education as the authorizing entity.

The Investigation did not reveal a written policy that indicated that the CSO's plan was to renew all schools in the 2020-21 and 2021-22 cohorts, as the AACSC alleged was the proposed course of action. However, the CSO reduced to writing its plans to navigate the renewal process during the COVID-19 pandemic. For example, on March 29, 2021, just 23 days after Governor Tom Wolf released a proclamation of disaster emergency, CSO Employee #2 and CSO Employee #3 wrote a memorandum to the Board of Education entitled "Covid-19 Pandemic Modifications to Administrative Procedures under Policy 401." In the memo, the CSO stated that it had "determined that the Covid-19 pandemic necessitates modifications to the Administrative Procedures under Policy 401 to address needed flexibility for the 2020-21 and 2021-22 charter renewal cohorts." The CSO's corresponding changes to their "Administrative Procedures for Charter School Authorizing Functions" were formalized on April 8, 2021. Nowhere in the amended policy, however, does the CSO state a policy of unconditional renewal. Rather, the CSO's policy announcement sought greater flexibility to the process:

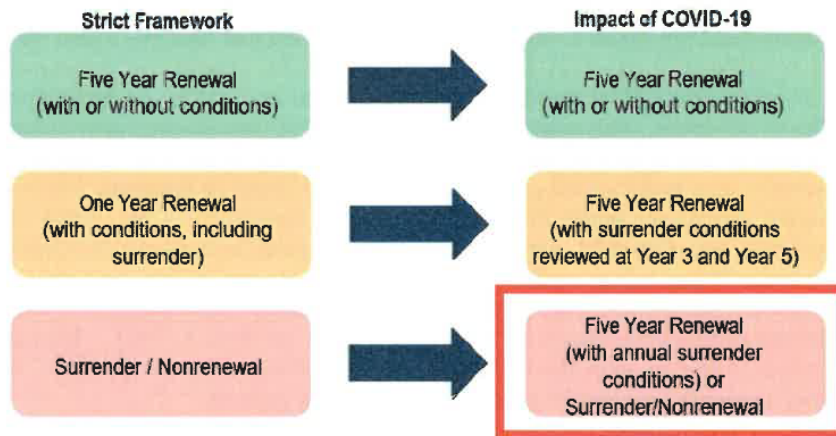
The CSO acknowledges that the COVID-19 pandemic has significantly impacted charter school operations and the availability of charter school data for charter schools in the 2020-21 and 2021-22 charter renewal cohorts. As a result of the COVID-19 pandemic, the CSO's ability to conduct a comprehensive review of the cumulative academic performance, operational compliance, and financial health for each charter school in the 2020-21 and 2021-22 charter renewal cohorts in accordance with the charter school performance framework has been and will be significantly impacted. Therefore, in order to provide needed flexibility in making renewal recommendations, the CSO may take into account the impact of COVID-19 on charter school data availability when making renewal recommendations solely for the 2020-21 and 2021-22 charter renewal cohorts. The names of charter schools in the 2020-21 and 2021-22 charter renewal cohorts shall be posted on the CSO's website.

On April 15, 2021, the CSO presented to the Board of Education³⁸² and detailed how the renewal process would be impacted by the COVID-19 pandemic. That presentation stated "[t]hrough modifications to the Administrative Procedures under Policy 401, the CSO may take into account the impact of COVID-19 on charter school data availability when making renewal

³⁸² The Investigation Team could not locate any different presentation that was presented to charter schools specifically.

recommendations solely for the 2020-21 and 2021-22 renewal cohorts.” Importantly, the seventh slide in the deck made clear that nonrenewal was still a potential outcome in the renewal process:

Potential Changes to Renewal Recommendations



7

Lastly, on a separate slide, the CSO made clear that charter schools in Philadelphia were still accountable under the Framework: **“Will the CSO still use the Charter School Performance Framework? . . . Yes. ALL charter schools will still be held to rigorous standards and the CSO will continue to publish Annual Charter Evaluations (ACEs) for every school.”**

However, in a June 2021 email amongst CSO staff discussing a potential press statement, a draft answer to the below question was suggested:

[Q]uestion: There are allegations of discrimination and racism, specifically against Black-led charter schools. The leadership of the CSO, District, and the majority of Board members are Black. Do you see these allegations as more of a symptom of systematic issues or is it actually a unique issue here?

Answer: “These issues are complex and reach beyond the racial identity of those in either Board or Charter School leadership,” said []. “We are eager to engage in the complexities of this issue, and a **five-year renewal for all of our schools this year allows us to push for the insight needed to surface systemic issues and have a path forward for the betterment of our children.**”

A District employee responded, “I am worried that this quote reads as if the 5 year renewals are a direct result of the AACSC advocacy and not about the impact of COVID.” When asked about this email, CSO Employee #3 explained that the CSO never proposed or committed to automatically renewing any school. Rather, CSO Employee #3 explained that all five schools in

the 2020-21 cohort independently qualified for a renewal of their charter based on performance as measured against the Framework. CSO Employee #3 further stated that they did not believe that the statement had ever been published.

The CSO ultimately recommended that all but one Black-led school³⁸³ in the 2020-21 cohort be renewed for five-year terms. Another school in this renewal cohort, which was not Black-led, received a five-year renewal subject to a surrender clause.³⁸⁴ The remaining schools in the renewal cohort received five-year renewals. And, while outside the scope of this investigation, the Board of Education did vote to initiate nonrenewal proceedings for some schools in the 2021-22 renewal cohort.

Thus, the Investigation did not reveal any independent or objective evidence that there was a formal policy to automatically renew all schools in the 2020-21 and 2021-22 renewal cohorts as a result of COVID-19. Instead, the Investigation concludes that the CSO's messaging regarding the impact of COVID-19 upon the renewal process was confusing, a conclusion that is supported by at least one internal email. To be clear, however, the Investigation did not reveal that there was a racial bias in the announcement of the COVID-19-related procedures and/or the CSO's consideration of how to evaluate schools during the COVID-19 pandemic.

D. Allegations of Bias in Nonrenewal and Revocation Proceedings by Black Charter School Leaders

Two former charter school leaders of closed schools reported alleged bias in and leading up to their nonrenewal and revocation proceedings.

1. Allegation of Racial Bias in School #1's Nonrenewal Proceedings

One former charter school leader alleged that there was racial bias in their school's nonrenewal proceedings.³⁸⁵ As a threshold matter, the former school leader took issue with the CSO's perceived level of autonomy, citing a statement that CSO Employee #1 allegedly made regarding the CSO's "absolute discretion" in creating the renewal framework against which charter schools are judged. The former charter school leader felt that this statement was not only improper, but also inaccurate. In 2017, the SRC recommended the subject charter school for nonrenewal. Subsequent to the SRC's vote to initiate nonrenewal proceedings, a Hearing Officer (selected by the SRC) conducted a fourteen-day hearing. As a result of these proceedings, the school ceased operating in 2019.

The attorney for the now-closed school described the fourteen-day hearing as a "circus" designed to expedite the process and accelerate a nonrenewal recommendation. For example, the attorney

³⁸³ The CSO made no recommendation for this school, with whom the District was engaged in pending litigation and audit issues remained outstanding. To date, this school remains open.

³⁸⁴ Sch. Dist. of Phila., Charter Schools Office, Renewal Process, <https://www.philasd.org/charterschools/renewal/> (last visited June 11, 2023).

³⁸⁵ This person was accompanied by their counsel.

reported that the school's requests for additional time to prepare for the hearing were met with resistance by the Hearing Officer and District. The former school leader felt that the Hearing Officer was deferential to the District's attorney throughout the proceedings. They also believed that the Hearing Officer favored the District, including in rendering evidentiary decisions, for example by allowing for the admission of hearsay against the school. The school's attorney further alleged that the Hearing Officer and the attorney representing the District in the hearing worked at the same law firm.

The school leader and the school's attorney noted that, during the nonrenewal proceedings, the school specifically asserted that racial bias had negatively influenced the CSO's evaluation of the school. According to the school leader and the school's attorney, the District's defense to these allegations of racial discrimination was to highlight that some of the individuals involved in the evaluation process from the "District side" were Black.

During the nonrenewal proceedings, the now-closed charter school also raised the following objections to the CSO's evaluation and the hearing process:

- The school leader did not receive the updated framework against which they would be evaluated until after they submitted their application for renewal.
- The school's peer group was inappropriate because the other schools in the group were inappropriate comparators.
- The CSO improperly considered whether their students finished college or university. The school asserted that this was improper and unfair because many of the school's students dropped out of post-secondary schools because they could not afford to continue their education. Instead, the school argued that matriculation should have been the metric by which the school was evaluated.

Those associated with the District had limited recollections regarding the nonrenewal proceedings for this school, and even fewer recollections regarding the allegations of racial bias that the school raised during those proceedings. CSO Employee #1 recalled that, during the nonrenewal proceedings, this charter school had asserted that the CSO and the District were racially biased against the school and its leadership. CSO Employee #1 could not, however, recall any discussion of this allegation within the District. Others from the District, however, did not recall allegations of racial bias or discrimination raised by this charter school whatsoever. For example, Board of Education Employee #1 did not recall the allegations even when shown portions of the Hearing Officer's report addressing the claims. Board of Education Employee #1 did report that the Board of Education had generally discussed allegations that minority schools were or are currently being treated unfairly by the SRC/Board of Education, which is a premise that Board of Education Employee #1 rejected. Instead, Board of Education Employee #1 argued that the SRC and Board of Education have worked hard to ensure that the Framework is applied fairly. Moreover, Board of Education Employee #1 stated that the SRC and Board of Education Members' principal concerns are outcomes and stability for students.

The Investigation revealed that in the fall of 2016, the CSO evaluated School #1's 2016 renewal application. As part of its evaluation, the CSO collected data, conducted 60 site visits, and assessed

the school's performance. In June 2017, the CSO published its findings in a report that recommended nonrenewal of the school's charter. The SRC circulated a resolution shortly thereafter, listing several dozen distinct grounds for nonrenewal of the school's charter, including subpar academic performance by the school's pupils and the school's failure to adhere to its mission as articulated in the school's original charter and renewal applications. The SRC called for a public hearing to address the CSO's nonrenewal recommendation and appointed a Hearing Officer to preside over the hearing and issue a proposed report.

As noted by the former school's leader, a fourteen-day hearing was held in the fall of 2017. Although the former school's leader and attorney alleged that their requests for additional time to prepare were met with resistance, according to the Hearing Officer's Report, after the school objected to the initial hearing date, it was given an additional month to prepare. Further, despite the school's attorney's claims, a review of documents revealed that the Hearing Officer and the attorney representing the District in the proceedings did not work at the same law firm.

Further, while the Hearing Officer's Report does demonstrate that the school asserted that hearsay objections were handled unfairly during the course of the hearing, the Hearing Officer rejected this claim. Specifically, the Hearing Officer noted that the school had not objected to the alleged hearsay proffered by the District, whereas the District had objected to alleged hearsay proffered by the school. Thus, the Hearing Officer concluded that no double standard existed in the manner in which hearsay objections were adjudicated during the hearing. Moreover, the Investigation Team finds the Hearing Officer's explanation for rejecting certain additional testimony proffered by the school on hearsay grounds well founded.

Additionally, while those interviewed from the District did not recall the school raising concerns regarding racial bias in the renewal process, the Hearing Officer's Report addressed these allegations. The Report indicates that "[d]uring his testimony at the hearing, [the school leader] contended that the CSO appears to be 'targeting schools that are led by individuals of color,' because it is 'treating charter schools run by African American school leaders differently than charter schools that are run by school leaders who are not African American.'" The Report then quoted an exchange from the hearing wherein the Hearing Officer asked the school leader whether their contention was "that the different treatment is with respect to who is [the school] leader as opposed to some other characteristics of [the school.]" The school leader responded:

My contention is that there is not a clear standard as to how charters in the City of Philadelphia – charter leaders in the City of Philadelphia are evaluated. That's my position.

To add to that position, it leaves one to wonder whether or not the Charter Schools Office is targeting specific leaders of color who are running charter schools. That's my position. Because you say one thing and do another. That's unclear and then you want to look at, well, why are certain individuals being targeted.

Further, the school leader alleged "that the CSO was discriminating against schools with 'black and brown' *students*, as opposed to African American school *leaders*."

According to the Hearing Officer's Report, the school relied upon two principal arguments in support of its allegations of racial bias. *First*, a "belief that the CSO was not following its own protocol because it did not recommend nonrenewal of every school that did not meet the academic standard." *Second*, that a "comment that was allegedly made by [SRC Member #4] at an SRC meeting" that the Hearing Officer had determined was hearsay and excluded from the proceeding demonstrated the racial bias.

With regard to the first argument, the Hearing Officer explained that the school leader's "interpretation of the CSO's protocol is incorrect, because the CSO's rating methodology states only that 'a charter school that does not meet the standard for academic success will be considered for nonrenewal . . .,' not that nonrenewal will always be recommended for such a school." The Hearing Officer stated that the school did not have concrete evidence of disparate treatment for either Black-led schools or majority-Black schools. The Report further explained that Equal Protection Clause "prohibits 'selective enforcement' of a law based on an unjustifiable standard, which means the school leader had to prove that the CSO has applied the CSL unequally to those who are entitled to be treated alike, and that it did so with a discriminatory purpose." The Hearing Officer concluded that the school had not met that burden.

Although the former school leader asserted during their interview that they were not provided with the updated framework against which they would be evaluated until after they submitted their application for renewal, the Investigation did not substantiate this claim in its review of District documents. And, while the Hearing Officer's Report indicates that there were changes forthcoming to the Framework, the Report is clear that these changes would not have impacted the CSO's assessment of the school.

Further, while the school leader claimed that CSO Employee #1 stated they had "absolute discretion" in creating the renewal Framework, transcripts from the nonrenewal hearing do not substantiate that this occurred, at least not during that hearing. While the transcript from the hearing does indicate that CSO Employee #1 testified that they had discretion to change reports, and regarding whether to recommend changes to the Framework to the SRC. But, CSO Employee #1 was clear in their testimony: "The [CSO] makes recommendations to the [SRC]. Ultimately the [SRC] is the authorizer." Thus, CSO Employee #1 testified that they had "discretion to make recommendations to the [SRC]."

The school alleged that the schools included in its peer group were unfair, as three of the schools in the peer group were special admit schools. However, the Report concluded, "how the CSO performed its peer group comparison is inconsequential at this stage, given that the SRC did not rely upon it as a basis for commencing this proceeding and the Hearing Officer is not relying upon it as a basis for his recommendation, findings or conclusions." The Report also includes a discussion of changes to the performance Framework to create similar schools groups (as distinct from the peer groups used for this school's cohorts), but concluded that "[the school] did not offer any evidence that the CSO's recommendation would have been different if the prospective change to the CSO's performance framework had been applied to [the school]."

Lastly, although the school leaders asserted that it was improper and unfair for the Hearing Officer to consider post-secondary graduation rates as opposed to matriculation rates, even if such a standard had applied, the school would not have met the standard. One of the school's stated goals

was that 70% of graduating students would submit deposits to college in 2012-13. This number was intended to increase by 5% every year thereafter, building up to 90% in 2017. The school intended to track college deposits as an indicator of likely college matriculation. School #1 did not meet this goal for any year of their 2016-17 charter term.

Ultimately, the Hearing Officer's Report published in March 2018 recommended that the school's charter not be renewed. Specifically, the Hearing Officer found that the school "violated material standards and conditions contained in its written charter, has failed to meet applicable requirements for student performance, and has violated applicable laws from which it has not been exempted."

CAB affirmed the decision in 2019, finding the record to be "devoid of any evidence of bias by the Hearing Officer." And, in 2020, the Commonwealth Court affirmed the CAB. In affirming the CAB, the Commonwealth Court did not address the school's allegations of bias or racism.

The Investigation did not uncover any evidence of racial bias or discrimination in this school's renewal proceedings and as such, does not conclude that the CSO exhibited bias throughout the school's renewal process and nonrenewal proceeding.

2. Allegation of Racial Bias in School #2's Revocation Proceedings

A former leader of a school whose charter had been revoked alleged that their school was targeted for closure because of their political activism on matters related to race and school choice. The school leader alleged that racial bias and their political activism were the only explanations for the school's closing, as it was their view that the Black-led charter schools targeted by the SRC outperformed District-run schools.

The school leader explained that they started an advocacy group in the 1950s because they were curious about the disparities facing Black communities in Philadelphia. The school leader ran the group until 1985 and described the project as a "prototype" in training people during the Black Power Movement and the Civil Rights Movement. In the 1980s, the school leader joined forces with the Archdioceses of Philadelphia to fight for parental school choice, charter schools, and school vouchers. And, in the 1990s, the school leader worked with then-Governor Tom Ridge as part of the parental school choice movement to advocate for charter school legislation in Pennsylvania. After Pennsylvania's Charter School Law failed to pass in 1995 and 1996, the school leader reported that they and other advocates "kept fighting" and in 1997, Governor Ridge signed the Charter School Law into law. The school leader believed that because of their political activism, their experience as a Black charter school leader is unique, stating that "[the District's] view of me is more political than racial" but noted that "race is always there."

The school leader opened their charter school in 2000 and claims that then-Mayor John Street's administration led efforts to shut down their school from the beginning, which the school leader opined was due to their political history, since "education is a political tool." The school leader elaborated that when they applied for the school's initial charter, the SRC did not act on the application within the statutorily required window, which required the school leader to go directly to the State and appeal the SRC's indecision. Per the school leader, after the State granted the school its charter, the District attempted to overturn the State's decision by bringing a lawsuit but was unsuccessful.

When discussing the revocation of the school's charter, the school leader stated that they do not believe that the 2014 revocation was a fair process. The school leader explained that they received a call from SRC Member #5 informing the school leader that the SRC was going to revoke the school's charter. The school leader reported that SRC Member #5 told them that the superintendent recommended closure. The school leader believed that the superintendent did not come to the decision on their own and "there were people behind the scenes who were more powerful [than the superintendent]." The school leader stated that the reason for revocation, as it was explained to them by the District, was related to low test scores and poor finances.

The school leader explained that at the time of the revocation decision, the school was recovering from a period of financial difficulty, owing the District funds. Yet, according to the school's leader, the school would have been able to meet its financial obligations to the District.

While the school leader alleged that racial discrimination and their history of political activism played a role in their school's closure, they could not pinpoint a specific action taken by the District or the SRC that exhibited these motivations. However, the school leader explained that when one compares the performance of District schools to the performance of the charter schools that the SRC closed, which they asserted were disproportionately Black-led, the only rationale for these decisions was, in their opinion, that the decision was related to the race and/or politics of the school's leaders.

Those associated with the District and the SRC, however, denied that the school leader's race or political activism played a role in their decision to revoke the school's charter. SRC Member #4 recalled the vote to revoke the school's charter. According to SRC Member #4, they had an exchange with the school leader during the hearing in which the school leader expressed their disagreement with how the District evaluated School #2 based on its test performance. SRC Member #4 said that the school leader thought the District should use "another metric" for academic performance. But, according to SRC Member #4, the school leader could not articulate an alternative metric. SRC Member #4 reported that they thought test scores were an appropriate metric, and therefore, they believed that the school's low test scores were what drove the SRC's decision to vote for revocation.

SRC Member #4 was clear, however, that such a vote was not one that they cast without pause. Rather, according to SRC Member #4, they always had pause over casting a nonrenewal or revocation vote because they wanted to know where the students would go if the charter school were to close. SRC Member #4 explained that with regard to School #2, the students would be dispersed city-wide, and "most" of the schools that would absorb the students "would be better than [School #2]." Although SRC Member #4 reported that they also considered that School #2 had enrolled students beyond its enrollment cap and faced "some financial issues," its academic performance was the most important factor motivating their decision to vote in favor of revocation. SRC Member #4 also recalled that, of all the nonrenewal and revocation votes in which they participated, the SRC received the most input from politicians regarding the revocation decision for School #2. According to SRC Member #4, those politicians all supported keeping the school open.

Similarly, SRC Member #2 recalled that School #2 had poor academic performance and lacked financial stability. They likewise recalled that the school leader questioned the ability of the SRC

to revoke the school's charter. SRC Member #2 stated that closing the school gave them some pause because, as they found to be true for every school, the decision to close a school created a disruption in students' lives.

However, SRC Member #1 was critical of the SRC's action with regard to School #2. Specifically, SRC Member #1 stated that they believed that the District intentionally compared Black-led schools to schools "far away" (*i.e.*, outside of the school's neighborhood), and used School #2 as an example. SRC Member #1 stated that they knew parents whose children attended School #2, and through these parents they learned about the school and the school's peer group against which it was compared. SRC Member #1 stated that the school was compared to schools from inapposite neighborhoods. When asked whether they believed the District targeted Black-led schools, SRC Member #1 stated, "I [just] know" they intentionally made unfair comparisons. SRC Member #1 stated that they were the only SRC member to raise this issue. During the interview, SRC Member #1 mistakenly thought they had voted to not revoke the charter, and described the school as a "good performing school" that was "good for [the] community." SRC Member #1 stated that they intended to vote to keep the school open, but they found the manner in which the vote was worded confusing. Thus, SRC Member #1 stated that to the extent they did vote to close the school, it was not their intention.

Further, SRC Member #1 reported that they did not know whether racial bias played a role in the closure of the school, but they did concede that the school leader's activism may have played a role in the SRC's vote. When asked to explain the basis, SRC Member #1 stated, "you hear things," and further stated that what they heard from SRC members, the CSO, and the District confirmed their belief that the school leader's activism may have played a role in the school closure. SRC Member #1 noted their belief that people "put their personal feelings in[to] making decisions as opposed to what is best for children."

Despite SRC Member #1's statements, the Investigation did not reveal any documents that support the school leader's contention that School #2's closure was either racially or politically motivated. Rather, an internal memorandum dated April 14, 2014 from a then-deputy superintendent indicated that the CSO recommended that the SRC revoke the school's charter because it failed to meet student performance requirements, violated its charter and applicable laws, and failed to meet generally accepted standards of fiscal management and audit requirements. None of the documents reviewed demonstrated that either the CSO or the SRC were aware of the school leader's long, personal background in community organizing and history of advocating for charter schools. Yet, in 2014, when School #2 was facing the prospect of closure (after the CSO had already recommended revocation of the charter and after the SRC had adopted the revocation resolution), the Investigation revealed that the CSO was aware that the school leader was organizing events in the community to protest School #2's closure. For example, in one email, a CSO staffer forwarded an article to CSO Employee #3 about a rally directed by the school leader to protest the impending shutdown of the school.

The Hearing Officer's Report ultimately concluded that the School District had established grounds for revocation, finding that the school had: (1) failed to meet general standards for student academic performance; (2) failed to meet the academic standards agreed to in its charter; (3) failed to meet generally accepted standards of fiscal management and audit requirements, (4) violated

applicable laws (including requirements to employ highly qualified teachers); and (5) voluntarily closed the school abruptly, in violation of its charter.

With regard to the Hearing Officer's conclusion that the school had failed to meet generally accepted standards of fiscal management, the Hearing Officer Report found:

There are . . . significant unpaid liabilities that have not been factored into the school's audit, budget or accruals and have not been paid to date, including a \$1.5 million judgment entered in favor of the School District and an additional \$1.1 million in overbillings for the 2012-2013 school year."

The Hearing Officer's Report also concluded that the school leader had not provided evidence that there had been racial bias or discrimination in the school's revocation proceedings. While the Hearing Officer acknowledged that the school leader had testified that a very high percentage of the school's students were minorities, the Hearing Officer noted that the school's leader "could not say that the percentage of minorities at [School #2] [was] greater than the percentage at any other neighborhood school . . . Nor was any evidence presented of an intent to discriminate against such minorities." The Hearing Officer's Report further found that the school leader's political activism did not motivate the District's action. While the Hearing Officer considered the allegations to raise a First Amendment claim, like the school leader's claims of racial discrimination, the Hearing Officer found that the school leader's allegation was based "entirely on assumptions and speculation[.]" Indeed, the school leader conceded during their testimony that they did not have any evidence to demonstrate that the District's actions were based upon his political activism.

Lastly, the Investigation Team considered the school leader's concern that their school was not compared to neighborhood District schools. When the school was in operation, the Office of Research and Accountability at the School District generated School Peer Groups. And, when the CSO evaluated charter schools, the CSO compared the charter school's performance to the performance of other schools in that school's School Peer Group. Peer Groups were of various sizes, and although they considered demographic information of the student population, the primary data used in the creation of Peer Groups was school performance. Peer Groups consisted of schools from across the city. Because of this, none of the charter schools evaluated during this period was necessarily compared to the schools in their neighborhood as part of their annual evaluation. This system has since changed to SSGs, as discussed in Part IV.B.4(d), *supra*. The Investigation Team compared the school's Keystone/PSSA proficiency scores for the 2012-2013 academic year to the closest District neighborhood schools' scores. This comparison reveals that the school's pupils outperformed one of its neighboring high schools, performed slightly worse in math and slightly better in reading compared to the second neighboring high school, and performed either the same or slightly worse than its neighboring middle schools. The foregoing thus supports the school leader's allegations that the school outperformed some of its neighborhood schools. However, given that all schools – not just Black-led schools – were subject to the same procedures for the grouping of schools, the Investigation does not conclude that the use of the Peer Group in School #2's evaluation was a result of racial bias.

The emails and other documents provided by the District to the Investigation Team did not reveal intentional racial bias or political bias against this school leader. Rather, the evidence with respect to School # 2 is consistent with the Investigation’s finding that standalone charter schools – which Black-led schools are predominantly – often face significant difficulties in their financial performance, as discussed in Part IV.B.2, *supra*.

V. CONCLUSIONS

A. The School District Was Aware of Racial Disparities in Its Charter Authorizing Practices as Early as 2017; However, the District Did Not Engage in Meaningful Efforts to Investigate or Address These Concerns

The Investigation revealed that the relationship between Black charter school leaders and the CSO was not always as antagonistic as some describe it today, [REDACTED]

[REDACTED]

[REDACTED]

The Investigation revealed that in 2018, CSO Employee #1 created a chart for the SRC that identified twelve charter schools that closed because of Board of Education/SRC action from 2007 through 2017. This chart identified the race of the leader of each of these schools in a separate column. The Investigation Team concluded that this chart was created in response to a December 2017 request from an SRC Commissioner for the “minority led status of all charter school nonrenewal/closure actions in Philadelphia.”

Also, in 2018, CSO Employee #1 was involved in organizing a “minority-led charters focus group.” CSO Employee #1 failed to disclose these actions during their initial interviews and, when confronted with the documents, responded that they did not disclose these actions because they had not been specifically asked about these documents. And, while none of those interviewed that were asked about the specific documents created in 2018 could recall the genesis for them or the circumstances surrounding their creation, it is clear that as of 2018, the then-SRC and the CSO were on notice of the concerns that have in large part led to this Investigation. The Investigation found no evidence that any actions were taken to fully investigate and take corrective action at that time.

Furthermore, in late 2018 or early 2019, a CSO staffer created a slide deck titled “Minority Led Charter Schools Briefing.” In the presentation, the CSO focused on a few major points: the Board of Education and CSO’s focus on quality; an overview of closed schools; context on those closures; an overview of current CSO initiatives; and an overview of the Framework. The slide deck acknowledged that Black-led charter schools faced challenges due to a lack of financial resources.

But the new “initiatives” discussed in the presentation were preexisting CSO policies with the exception of a newly-started monthly Newsletter. In June 2019, another high-ranking employee justified the closure of minority-led schools, citing that over the past six years that CSO had “elevated the bar for school performance and compliance” and that those schools were underserving students and not complying with the law. Ultimately, however, the individual concluded that the CSO was not “able to effectively and independently lead [a] dialogue” regarding “support for schools led by people of color.”

This evidence shows the lack of a robust response from the District. The District has not acted expediently to address racial inequality concerns in other circumstances, as described *supra* in Part III.A.1.

B. Pennsylvania’s Authorizing Model Creates an Inherent Conflict of Interest Between the Board of Education as the Authorizing Entity and Competitor to Charter Schools; The CSO Is Similarly Conflicted in Its Interactions with Charter Schools as the Evaluating Arm of the Board of Education and its Role as a Resource to Charter Schools

The Investigation finds that inherent conflicts of interest exist in how charter schools are authorized, evaluated, and funded under Pennsylvania’s Charter School Law. Pursuant to this law, the District allocates funds to both District and charter schools on a per-pupil basis. As a result, when a student moves from a District school to a charter school, so do the funds associated with that student. Throughout the Investigation, individuals associated with the District and those associated with the charter school sector cited the inherent conflict of interest that exists in a system where the Board of Education is simultaneously the authorizing entity for charter schools and a competitor not only for students but also for funding. The Investigation finds that these concerns are well founded. These conflicts generally affect all charter schools. However, Black-led charter schools, many of which are standalone charters, tend to be less resourced with decreased access to administrative support, and are more likely to rely upon support offered by the CSO to meet various compliance requirements. Thus, the effects of any conflicts of interest may be felt more severely by those schools. We note that this conflict is not of the District’s making, but is created by the regulatory structure imposed by law.

Additionally, interviewees from the charter school sector reported that the CSO is similarly conflicted. The Board of Education has delegated its day-to-day oversight of charter schools to the CSO. At the same time, the CSO is an arm of the District that reports directly to the Board of Education. And many from the charter school sector reported that the CSO had an added internal conflict between its role as the evaluating entity of charter schools and as a resource to the charter schools it is tasked with evaluating. Lastly, some cited the conflicts of interest that arise when a charter school and the District are engaged in ongoing, costly litigation and raised concerns that standalone Black-led schools, which tend to have fewer resources for court battles, might be less likely to challenge authorizing decisions in the face of costly legal fees. Overall, the Investigation finds that these layered conflicts of interest have led to and continue to cause an overall distrust in the authorization process in Philadelphia. Moreover, the Investigation finds that these concerns were not only raised among those from the charter school sector, but also those associated with the District.

C. The Board of Education’s Use of Executive Sessions at Crucial Stages of the Renewal Process Decreases Transparency in the Process and Engenders Mistrust in the Charter School Sector

The Investigation revealed that the Board of Education utilizes executive – or nonpublic – sessions at several crucial points in the renewal process. The Investigation did not reveal that the Board of Education or SRC violated the Sunshine Act in doing so.³⁸⁶ However, one Board of Education member’s description of executive sessions as an opportunity for Board of Education members to “temperature check” each other gave the Investigation Team pause, particularly when the Board of Education may not be performing quasi-judicial functions. Moreover, SRC and Board of Education members expressed concerns about the frequent use of executive sessions and questioned the propriety of receiving briefings regarding charter school performance from CSO employees in closed-door sessions regarding the same information to be presented publicly at a later date. The use of executive sessions has caused Black charter school leaders to further mistrust a process that has impacted a greater number of Black-led schools than non-Black-led schools.

Nearly all interviewed agreed that the decision to *initiate* nonrenewal proceedings (which occurs prior to any fact-finding evidentiary hearings regarding nonrenewal) can have immense consequences for the charter school, the school’s students, and the broader communities that the school serves. Yet, despite the pivotal importance, charter school leaders do not have any real or formalized opportunity to make a case for their school directly to the SRC/Board of Education before a public vote instituting nonrenewal proceedings. And the SRC/Board of Education’s use of executive sessions, which provides the CSO and Hearing Officers with direct and nonpublic access to the SRC/Board of Education to present their respective positions, only exacerbated the concerns that Black charter school leaders articulated. Although the CSO measures, through the Framework, charter schools’ parent and family engagement and school climate and culture, many Black-led charter schools (whom were interviewed) explained that their value to the communities that they serve is not accounted for in the Framework, so it was particularly important to those school leaders to be given an opportunity to demonstrate the support from their community during these crucial proceedings. At base, several charter school leaders contended that the use of executive sessions to allow the SRC/Board of Education to confer with the CSO was inherently unfair. Thus, the Investigation concludes that the SRC/Board of Education’s frequent use of executive sessions for potentially non-quasi-judicial purposes has only served to intensify the adversarial relationship between the charter school community and the Board of Education.

³⁸⁶ Additionally, Pennsylvania courts have rejected the argument that the failure to provide charter schools with the opportunity to be heard prior to nonrenewal proceedings constitutes a constitutional violation. See *Graystone Acad. Charter Sch. v. Coatesville Area Sch. Dist.*, 99 A.3d 125, 142 (Pa. Commw. Ct. 2014) (finding that the Board of Education complied with the requirements of due process “by: (1) appointing a hearing officer to hold a hearing at which the Charter School was represented by counsel and had the opportunity to cross-examine witnesses; (2) reviewing the officer’s findings of facts, conclusions of law and recommendation; and (3) making an independent ruling based on the entire record”) (cleaned up).

D. The Hearing Officer Hiring Process Creates a Perception of Unfairness

This perceived unfairness and distrust in the process manifested in other areas. Where the Board of Education votes to issue a notice of nonrenewal or revocation for a charter school, the President of the Board of Education then appoints a Hearing Officer from a list provided by the Chief of Staff to the Board. The Board of Education President, without public deliberation, chooses a Hearing Officer unilaterally. And, for years, the Board of Education selected the same individual for roughly 75% of nonrenewal hearings.

According to the District, the pool of those who may be qualified to serve in such a role is limited. But, the reliance on a small few who never disagreed with the Board's initial vote led many to feel that the hearing process was not a true opportunity for due process. And, while no one interviewed expressed a concern that the Hearing Officers were racially biased, there was a concern that those selected were strongly biased against charter schools generally and that the effects were felt more severely by Black-led charter schools (particularly standalone schools). Moreover, nothing prohibits the Board of Education from altering its process for the selection of a Hearing Officer or permitting the charter sector to have meaningful input into the process.

E. Standalone Schools Encounter Difficulty Meeting Administrative Demands to Comply with the Framework

Many interviewees opined that Pennsylvania's Charter School Law and Philadelphia's implementation through the Framework is complex, requiring that charter schools complete voluminous compliance paperwork annually. Schools affiliated with a CMO are more likely to be the recipients of charitable giving, financial assistance, and other resources and, therefore, generally have more administrative resources. But, interviewees from both the District side and the charter sector explained that, in Philadelphia, Black-led schools are generally standalone schools, often created in response to a perceived need in the specific community. Moreover, many interviewed, including both Black charter school leaders and individuals associated with the District, acknowledged that community-focused schools have inherent value because their mission is so closely tied to the needs of their community. Yet, the Investigation revealed that this community-focused approach can come at a cost, as these schools cannot benefit from the resources and economies of scale that are available when associated with a broader coalition of schools, particularly with regard to meeting the compliance requirements Pennsylvania Charter School Law imposes.

F. While the Framework Is Intended to Provide an Objective Means for Evaluating Charter Schools, It Fails to Provide Charter School Leaders and the General Public with Accessible Details Regarding Charter School Performance

The Investigation revealed a common criticism of the Framework: that it allows the CSO to utilize too much discretion when evaluating charter schools and that Black-led charter leaders believed that the CSO has exercised its discretion unfairly. This criticism was particularly focused on the CSO's evaluation of charter schools pursuant to the Organizational Compliance domain. Yet, while two charter school leaders provided a concrete allegation in support of this claim (that the

CSO provided different scores to identical policies), the Investigation was not able to confirm or dispute this allegation.

While CSO staffers interviewed reported that there were efforts to ensure that outcomes were standardized by, for example, asking other colleagues to review decisions that a school had failed to meet a standard, these efforts were *ad hoc* in nature. The Investigation revealed that historically, there have been no policies or codified procedures to ensure that each time a school is found not to meet a standard in the Organizational Compliance domain, the decision is reviewed by a second CSO staffer.

The Investigation simultaneously revealed that the CSO has taken steps to attempt to minimize the discretion afforded to evaluators pursuant to the Framework. Specifically, in 2021, the CSO implemented the Category Rating Business Rules (the “Business Rules”) to provide for greater objectivity in its evaluation of the standards contained within the Organizational Compliance domain. It is unclear, however, prior to the implementation of the Business Rules how, if at all, the CSO ensured that it measured Organization Compliance standards fairly and consistently across all schools. Moreover, given that CSO staffers and leadership have not received any implicit bias training as part of their CSO onboarding, the Investigation cannot rule out the possibility that the CSO exercised and continues to exercise its discretion in a discriminatory manner or in a manner that has a discriminatory effect, even if unintentional.

Moreover, the Investigation revealed that the Framework is an inaccessible evaluation tool for some within the charter school sector and the public at large. The lack of accessibility (*i.e.*, the absence of sufficient, explanatory details and justifications) is further exacerbated for standalone charter schools, whose leadership are often tasked with not just ensuring compliance with the Framework’s standards, but also with numerous other significant leadership tasks, including serving as the school’s educational lead. Given that Black-led and founded charter schools are more likely to be standalone charter schools in Philadelphia, the impact of the Framework’s inaccessibility is disproportionately felt by these schools.

The Investigation revealed that in recent years, the CSO has held numerous training sessions to explain the Framework and its Business Rules to charter school leaders, indicating the CSO’s acknowledgment of the need to explain these two crucial evaluation tools to the sector. However, attending these sessions may burden standalone and Black-founded and -run schools more than well-funded, CMO network schools. This is yet another example of how the Framework’s complexity may burden under-funded schools or schools that do not have staff dedicated solely to compliance.

Additionally, the Investigation demonstrated that the Framework is amended and/or modified frequently. Indeed, it required multiple meetings for the CSO staff to explain adequately to the Investigation Team how the Framework operates in practice and how to read ACE-R reports properly. It is likely, therefore, that the ACE-R reports may cause confusion among charter school leaders and the public, including prospective charter school parents. Further, interviewees from the charter school sector expressed concerns regarding how and when the CSO articulates those changes to the sector. And, given the strained relationship between the charter sector, particularly some Black-led and founded charter schools, and the CSO, these concerns are neither surprising nor simple to remedy.

G. The Use of Surrender Clauses Mostly Impacts Black-led Charter Schools

Although several Black charter school leaders expressed concerns regarding the Board of Education's use of surrender clauses in charters, the Investigation did not find this was unlawful. Nonetheless, a District document from 2019 reported that of four schools that "were previously recommended for non-renewal [and] executed surrender agreements with academic targets," three of them were "minority-led." This may be because schools that have fewer economic means at their disposal are potentially more likely to sign charters containing surrender clauses than schools with more financial resources. This is partially because economically disadvantaged schools may be unable to pursue the same legal remedies as schools with greater financial resources. In other words, some Black-led schools with limited financial resources – unable, for example, to afford to hire lawyers to represent them in nonrenewal/revocation proceedings or to pursue appeals – may assign greater value to charter agreements containing surrender clauses than schools that can afford every legal remedy available to them. And, the Investigation revealed that members of the Board of Education have similarly considered the financial impact of litigating a decision to non-renew a charter school when determining to vote in favor of a charter extension containing a surrender clause, which would avoid such costs.

H. Neither the CSO nor the Board of Education Receive Implicit Bias Training as Part of Their Onboarding; Nor Are Internal Audits Routinely Utilized to Ensure Equitable Decision Making

The Investigation revealed that neither the Board of Education/SRC nor the CSO has received implicit bias training as part of their onboarding for their roles on the Board, SRC, and CSO, respectively. Some CSO staffers reported that over the Relevant Time Period there were *ad hoc* attempts to audit or "double check" findings that schools were deficient with regard to metrics in the Organizational Compliance domain. Yet, this practice was not expressly put in place to identify and address implicit bias. Moreover, the Investigation revealed that there are no routine processes in place to ensure that the CSO's evaluation of charter schools and the Board of Education's actions are not resulting in a disparate impact on Black-led charter schools.

I. Individualized, Specific Allegations of Bias Against Individual Charter Schools Were Not Substantiated

The Investigation Team endeavored to investigate any individualized claims that were raised throughout the Investigation by, among other things, reviewing District and charter-school documents and interviewing District employees with personal knowledge of the allegations in question. It is worth noting that not every charter leader who spoke with the Investigation Team chose to lodge an individual claim of discrimination, even if they believed that the charter authorizing system was biased overall. To the extent charter school leaders who chose to speak with the Investigation Team made individualized allegations of racial bias, the Investigation did not corroborate them. Specifically, as discussed in Part IV.C & D, *supra*, the Investigation revealed no objective evidence that the District's actions with regard to the manner in which it adjudicated specific requests for relocation, enrollment cap expansions, or nonrenewal/revocation adjudication proceedings were motivated by intentional racial bias. The Investigation also did not reveal any independent or objective evidence that there was a formal policy to automatically renew all schools in the 2020-21 and 2021-22 renewal cohorts as a result of COVID-19. However, the

Investigation did demonstrate that the CSO communicated a confusing message to the charter sector. Yet, the Investigation did not reveal that this confusing message was in any way racially motivated or biased.

VI. RECOMMENDATIONS

Based on the information collected throughout the course of this Investigation, the Investigation Team presents the following recommendations to ameliorate the issues identified in the Investigation as discussed in Part IV and V, *supra*, which are based on the Investigation Team's findings of facts, review of pertinent documents and materials, and study of best practices employed by other jurisdictions.³⁸⁷ The Investigation Team recognizes that to implement some of these recommendations, Pennsylvania's Charter School Law may need to be amended, which would require action by the Pennsylvania General Assembly.

To the extent these recommendations can alleviate concerns regarding charter authorizing trends involving schools led by people of color, it would benefit taxpayers, parents, and students. Diversity in school leadership benefits all students. Black-run charter schools often recruit more teachers of color than White-led schools, which, according to academic studies, leads to better outcomes for students of color. It is indisputable that significant educational benefits flow from racial and ethnic diversity in school settings.

To the extent that implementing the below recommendations would increase transparency in charter authorization and government decision-making, parents and taxpayers would benefit. Greater access to information helps taxpayers assess the efficacy of their school district and public schools, and helps parents choose the best school for their children. It would also help minimize concerns of racial bias.

A. To Ameliorate Inherent Conflicts of Interest, the District Should Petition the Pennsylvania General Assembly to Hold Hearings Regarding Whether Certain Changes to the Charter School Law Are Necessary; In the Interim, the District Should Separate Charter Support and Evaluation Functions

Given the significant concerns raised regarding the inherent conflicts of interest present in a system in which the same entity serves as the charter school authorizer/evaluator/funder, and a competitor to charter schools, potential solutions should be evaluated to mitigate these concerns. There are two avenues through which this can be accomplished. First, and in the immediate future, the Board of Education should ensure that charter school support and evaluation functions are housed in separate offices within the District. Second, the District should facilitate public hearings to

³⁸⁷ Partially "in response to charter sector engagement over time," the CSO has committed to: (1) sharing draft reports with charter schools at least two weeks prior to public discussion of their reports, (2) invite charter schools to review evaluation reports with the CSO, and (3) ensure that any delays caused by the CSO in the evaluation process will result in applicable, corresponding deadline extensions for charter schools. While these changes address some of the concerns raised by charter school leaders, they do not address many of the systemic issues summarized in Part IV and Part V. Thus, the recommendations proposed herein are still needed to ameliorate the issues with charter authorization identified in this Report.

evaluate the benefits and disadvantages of amending the Charter School Law to provide for an alternative authorizing model that would alleviate these issues.

1. Stakeholders Should Petition the General Assembly to Hold Hearings to Evaluate Amending the Charter School Law to Provide for an Alternate Authorizing Model

“Authorizers are the entities granted authority by a legislature to approve, oversee, renew, and close charter schools.”³⁸⁸ Various authorization models have been employed throughout the country.³⁸⁹ Those models are: (1) Local education agencies (e.g., the School District of Philadelphia); (2) Independent chartering boards (“ICBs”) (e.g., the District of Columbia Public Charter School Board); (3) State education agencies, housed within a state’s department of education (e.g., Delaware State Board of Education); (4) Non-profit Organizations (e.g., Ohio); (5) Higher education models (e.g., the State University of New York Charter Schools Institute); and (6) Non-educational governmental bodies (e.g., Indianapolis Mayor’s Office). Pursuant to the Charter School Law, Pennsylvania employs the “local education agencies model,” wherein each school district authorizes charter schools in its geographic area.³⁹⁰

NACSA, which is the foremost national thought leader on charter school authorizing, acknowledges that there are some positive attributes of the local education agencies model.³⁹¹ For example, NACSA notes that the local education agency model has the potential to “offer depth of knowledge and expertise as well as services and facilities,” can treat “charters [as] an element of a portfolio of district schooling options[,]” and “[l]ocal approval [can] maximize[] political and community acceptance and support for charters.”³⁹² However, NACSA simultaneously notes that there are problems inherent to such a system where local leaders are “[p]rimar[ily] focus[ed] on traditional district schools” and as such, “may not embrace – or may be hostile to – chartering[.]”³⁹³

³⁸⁸ National Alliance for Public Charter Schools, How are Charter Schools Held Accountable?, <https://data.publiccharters.org/digest/charter-school-data-digest/who-authorizes-charter-schools/> (last visited June 20, 2023). National Alliance for Public Charter Schools is a nonprofit organization “committed to advancing the charter school movement.”

³⁸⁹ See NACSA, Authorizer Types Across the Country, <https://www.qualitycharters.org/authorizer-types/> (last visited June 20, 2023).

³⁹⁰ 24 P.S. § 17-1717-A of the Charter School Law governs the charter school application and initial authorization process. The Basic Education Circular on Charter Schools summarizes the role of individual school districts in considering requests to renew a charter. Pennsylvania Dep’t of Educ., Basic Educ. Circular: Charter Schools (Mar. 31, 2020), <https://www.education.pa.gov/Policy-Funding/BECS/Purdons/Pages/CharterSchools.aspx>.

³⁹¹ See NACSA, Authorizer Types Across the Country, <https://www.qualitycharters.org/authorizer-types/> (last visited June 20, 2023).

³⁹² *Id.*

³⁹³ *Id.*

Thus, the local education agencies model creates a “friction between charters and other district schools.”³⁹⁴

The Investigation revealed that this friction exists in Philadelphia, as outlined in Part IV and Part V.

Thus, we recommend that the District petition the General Assembly to evaluate the pros and cons of amending the Charter School Law to provide for a different authorizing model to alleviate the inherent conflicts of interest present in the current system. The need for amending the Charter School Law has also been recognized by a current Board of Education member. The legislature should conduct a fulsome review of charter authorizing practices in other jurisdictions to determine what authorizing model(s) would best fit into Philadelphia’s unique landscape. As part of this process, the legislature should ensure that the voices of those impacted by any amendments to the Charter School Law have the opportunity to be heard, including but not limited to, the parents of school-aged students in the Commonwealth, the Board of Education, charter school leaders, and other educators.

We emphasize that this recommendation should not serve to undermine Philadelphia’s local control of its school district, which has proved highly beneficial for public education in Philadelphia. The Board of Education might also consider holding its own local hearings or petitioning Philadelphia City Council to hold hearings, prior to petitioning the General Assembly.

2. *The Board of Education Should Separate the CSO’s Support and Authorizing Functions into Discrete Offices to Alleviate the Concerns Associated with the Inherent Conflicts of Interest the Investigation Identified*

As described in Part IV.B, *supra*, currently, the CSO provides some support to charter schools, such as resources to explain the Framework. However, both thought leaders in the charter authorizing space and current and former CSO staffers reported that this creates a tension. A common theme from those associated with the CSO was that it would be a “conflict of interest” for the CSO to advise a charter school on how to operate. At least one former CSO staffer articulated a concern that should the CSO advise a charter school on an area, the charter school may later blame the CSO if the charter school were to rely upon that advice, yet be determined to be non-compliant with the Framework.³⁹⁵ Additionally, one thought leader reported that when a charter school receives advice or resources from its authorizer, the charter school may feel compelled to follow that advice or accept the resource to ensure compliance with evaluation metrics and its continued operation. Feeling compelled to follow guidance from an authorizer is contrary to the purpose of charter schools, which are fundamentally established to encourage independence in education.³⁹⁶

³⁹⁴ *Id.*

³⁹⁵ *See supra* Part IV.B.1.

³⁹⁶ *Id.*

Nearly all interviewees acknowledged that the support that the CSO provides to charter schools can be helpful. This is particularly true for standalone charter schools that may lack the resources or staff solely dedicated to compliance.³⁹⁷ However, ideally, an independent organization, not overseen by the Board of Education, would provide support to charter schools.³⁹⁸

While under the current authorization model, the Board of Education oversees all support functions the District provides to charter schools, separating the CSO's support and evaluation functions into different offices could ameliorate the tensions articulated by members of both the charter school sector and the District. With separated offices, at least the same *individuals* will not serve both in a role as an evaluator and a supporter.³⁹⁹ This could provide charter schools with some comfort that the support the District provides is not compulsory. It may also allow for a less antagonistic relationship between the charter school sector and the arm of the District that is tasked with providing support. In turn, this could result in better outcomes for students, as charter schools may feel more empowered to ask for support as necessary and without fear that doing so could be later held against them. Likewise, those associated with the District may not feel as constrained in their ability to truly provide support.

We also recommend that the District petition the Commonwealth for financial resources to advance efforts to provide compliance-related technical assistance to charter schools (to be offered by a non-CSO entity). This recommendation is consistent with a CSO employee's proposal from March 2021 that the Commonwealth (through the Pennsylvania Department of Education) could assist schools led by people of color by establishing a fund for those schools to receive more resources. We also understand that some local efforts by the Board of Education to bolster technical assistance for charter schools are already underway.

B. The Board of Education Should Vary the Hearing Officer Utilized for Nonrenewal Proceedings and Should Consider a Model Wherein Charter Schools are Provided the Opportunity to Opine on the Process for Selecting Hearing Officers

As discussed in Part IV and Part V, *supra*, charter leaders expressed concern regarding the Board of Education's ability to unilaterally choose a Hearing Officer to preside over nonrenewal hearings. Charter school leaders also expressed concern that the Board of Education has used the same Hearing Officer over the Relevant Time Period to preside over nine nonrenewal hearings. Those interviewed alleged that this Hearing Officer is biased in favor of the Board of Education.

³⁹⁷ See *supra* Part IV.B.2.

³⁹⁸ *Id.*

³⁹⁹ Some charter leaders interviewed suggested that Philadelphia's Intermediate Unit should be the entity that serves a support function. However, unlike most school districts in Pennsylvania, the Philadelphia Intermediate Unit only serves the School District of Philadelphia. 24 P.S. § 9-902-A. Thus, the Philadelphia Intermediate Unit's Board of Directors is identical to the Board of Education. 24 P.S. § 9-910-A(g). Therefore, simply tasking charter school support functions to the Philadelphia Intermediate Unit would not solve the conflict of interest the Investigation revealed and which persons in the charter sector raised.

Indeed, as noted *supra*, over the Relevant Time Period the Hearing Officer in question found in favor of the Board of Education in each of the hearings that they have conducted and issued a report therefrom.

We recommend that the Board of Education adopt a system through which the charter school sector has the opportunity to opine on the process for selecting the Hearing Officer(s). This can be done in a number of ways, including: (1) the Board of Education and the charter school must come to an agreement on a single arbitrator, *i.e.*, Hearing Officer; or (2) the hearing proceeds before a panel of three Hearing Officers, with the Board of Education and the charter school each being permitted to choose a Hearing Officer, and those Hearing Officers selecting one “neutral” Hearing Officer. Alternately, if the above presents legal issues regarding delegation of board authority, the Board of Education could give the charter sector input on the slate of Hearing Officers from which it chooses officers for nonrenewal or revocation proceedings. While the Charter School Law does not mandate that the Board of Education provide the charter sector with this opportunity, it does not prohibit the adoption of such a process. And, given that all acknowledge the significance of a decision to close a charter school, allowing the charter sector to have greater input in the process would ensure that these decisions are thoroughly and appropriately vetted. Additionally, when deciding on a Hearing Officer, the Board of Education should consider recruiting diverse candidates.

At a minimum, the Board of Education should cease its current practice of utilizing the same Hearing Officer for most nonrenewal proceedings, as this practice has created the appearance of an improper bias towards the Board of Education and has resulted in a lack of trust in the system from the charter school sector. Further, and to that same end, we recommend that the District not allow an individual who has served as a Hearing Officer to represent the District in nonrenewal proceedings and vice versa. While this practice is not *per se* impermissible, the practice may undermine the appearance of impartiality and equity in the process, particularly in light of the imbalanced outcomes.

C. The Board of Education Should Take Steps to Increase Transparency in the Charter Renewal Process and to Provide Charter Schools with Opportunities to Be Heard Prior to a Public Vote to Initiate Nonrenewal Proceedings

The Investigation revealed that the Board of Education’s use of executive sessions during the charter renewal process reduces transparency, creating an appearance of impropriety among charter school leaders. Some SRC and Board of Education members questioned, during the Investigation, the manner in which the District used executive sessions. Thus, we recommend that the Board of Education only use executive sessions when they are necessary, and that engagement with the CSO on issues affecting the initiation of nonrenewal proceedings be limited to legal advice and the gathering of essential facts. We also recommend that the Board of Education eliminate the practice of engaging in “temperature checks” on each other’s views regarding CSO presentations and recommendations in these executive sessions.

Moreover, the Board of Education’s use of executive sessions is concerning when CSO staffers and leadership are present for or participating in the meetings where the fate of a charter school is first discussed by the Board of Education. This is a sensitive issue because, as several charter school leaders noted, the initial vote to initiate nonrenewal proceedings can result in significant

harm to a school, long before any evidentiary hearings regarding nonrenewal.⁴⁰⁰ However, currently the charter school's only formal opportunity to present its case directly to the Board of Education (as opposed to the CSO) prior to that vote is during the public comment period on the night of the vote itself.⁴⁰¹ A prior opportunity to be heard is particularly important given the concerns raised by those associated with the charter school sector that the CSO's evaluations are inaccurate or biased. Providing members of the charter school sector with greater opportunities to be heard earlier in the process will only serve to increase transparency and alleviate bias concerns.

D. The Board of Education and the CSO Should Implement Implicit Bias Trainings and Conduct Routine Audits to Ensure that the Discretion Afforded in the Framework Does Not Result in a Disproportionate Negative Impact upon Black-Led Charter Schools

The Investigation revealed that implicit bias training is currently not part of the initial training that Board of Education members, the Hearing Officers, or CSO staff receive. However, to ensure that all individuals who participate in the charter renewal process – either as evaluators or authorizers – are aware of their inherent biases, we recommend that both the Board of Education and the CSO implement regular implicit bias training as part of their onboarding. Hearing Officers should also be required to complete implicit bias training.

Further, although the CSO and the Board of Education/SRC touted their efforts to make the evaluation process as objective as possible, including by enacting the Framework as an evaluation tool, SRC Member #4, acknowledged that the process requires some level of subjectivity. The CSO should thus endeavor to identify where in the current Framework staff must exercise their discretion. For those areas, the CSO should conduct an audit of its evaluations to see if its use of discretion disproportionately disfavors Black-led charter schools. One CSO staffer reported that this type of analysis is already conducted on an *ad hoc* basis. The CSO must endeavor to standardize and expand upon this process, completing the audit before ACE and ACE-R reports are finalized so that any uncovered bias may be corrected prior to publication.

The Board of Education should also audit its decisions around charter applications, expansion requests, and renewal decisions to determine if a disproportionate number of Black-led schools are negatively impacted by their decisions. If disparate outcomes are identified in any given year, the Board of Education should endeavor to uncover the reason and correct any bias that infected its decision-making.

E. The CSO Should Consider Changes to the Framework to Increase Accessibility, Consider Equity, Reduce Burdensome Compliance Requirements, and Account for Student Improvement

As noted in Part V, *supra*, the Framework is a complicated and inaccessible system. The labor of navigating this system may fall harder on standalone charter schools, which are disproportionately Black-led and/or founded, given that they are less likely to have staff dedicated solely to

⁴⁰⁰ See *supra* Part IV.B.3.

⁴⁰¹ *Id.*

compliance. Needing to use CSO office hours or engage in trainings to interpret the Framework thus may be an unrealistic time demand for many Black-led charters. Thus, the CSO should develop and recommend changes to the Framework to the Board of Education that would streamline and simplify its evaluation of charter schools. Doing so would have the added benefit of improving the accessibility of the Framework as an evaluation tool for parents to make informed decisions about their children’s education. The Framework should also require the CSO to publish qualitative or narrative explanations for each of its ratings so that both charter schools and families can better interpret and use ACE and ACE-R reports.

In revising the ACE and ACE-R metrics, the CSO should consider how each metric may impact Black charter leaders inequitably. The CSO should consider how to update the Framework to prevent unduly punishing Black-led schools for the impacts of systemic racism, while ensuring educational quality for students.

Lastly, the CSO should, when possible “[c]ollect information from each school in a manner that minimizes administrative burdens on the school, while ensuring that performance and compliance information is collected with sufficient detail and timeliness to protect student and public interests.”⁴⁰² While this is a best practice generally, it is particularly helpful to standalone charter schools, which often do not have the same resources to dedicate to compliance as CMO-run schools.

F. The Board of Education Should Outline in a Public Document How it Intends to Implement AACSC’s Recommendations That Were Accepted by The Board

As set forth in *supra* Part III.C.2, the Board of Education agreed to implement the following recommendations from the AACSC: “[i]f the School District doesn’t meet its own deadlines, then all deadlines should be pushed back to accommodate new deadlines for both charter schools and the CSO”; “[t]he CSO should allow at least 2 weeks’ notice of status of renewal and they should agree to meet with schools prior to ACE-Reports and recommendations becoming public within that 2 week period”; and “[s]chools should not receive the ACE-R report on a Friday and then the information be posted on a Monday with no opportunity to speak or meet in between.”⁴⁰³ The District should publicly announce, in writing, how it will or has implemented these recommendations, with detail such as how much time schools will have between receiving the final ACE-R report and publication.

G. The Board of Education and the District Should Continue to Evaluate its Charter School Renewal Practices And, At a Minimum, Commit to Conducting a Periodic Equity Audit

To eliminate systemic biases within the renewal process and ensure that the Board of Education and the CSO’s charter school approval and renewal procedures and practices are fair to all schools, the District should – on an annual basis – evaluate its authorizing practices for inequities and

⁴⁰² NACSA, Principles & Standards for Quality Charter School Authorizing (2023), https://qualitycharters.org/wp-content/uploads/2023/03/Principles-and-Standards_2023.pdf.

⁴⁰³ Letter from AACSC to Joyce Wilkerson, former School Board President (Apr. 14, 2021).

generate ongoing recommendations. The audit should examine a range of factors that may impact the District's ability to ensure equity in its evaluation and renewal procedures and practices (including staff diversity, racial equity and bias training for employees, the Charter School Performance framework, conflicts of interest, and communication with charter school stakeholders).

Although the Investigation Team conducted a thorough review and analysis of the charter school renewal process, the District's process of self-evaluation should continue long after this Investigation concludes. Accordingly, the above-enumerated recommendations are not exhaustive and the District should use them as a starting point.

* * *



Analysis of Annual Charter Evaluations (ACE) Data from the School District of Philadelphia



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Executive Summary

This exploratory analysis was conducted on behalf of Ballard Spahr LLP as part of the firm's investigation of the disproportionate closure of Black-led charter schools in the City of Philadelphia. The analysis examined rating scores for evaluation metrics for Black-led charter schools (BLS) compared with other (non-Black led) charter schools (OCS) using the Annual Charter Evaluations (ACE) 2020-21 and 2021-22 Public Files provided by the School District of Philadelphia's Charter School Office (CSO).

The Annual Charter Evaluations (ACE) and Renewal Recommendation Reports (ACE-R) were created by the School District of Philadelphia's Charter School Office (CSO) and are based on the Charter School Performance Framework. The Charter School Performance Framework is composed of three domains of evaluation: Academic Success, Organizational Compliance and Viability, and Financial Health and Sustainability.

This report summarizes analysis of ACE data for four academic years including: 2016-17, 2017-18, 2018-19 and 2020-21. In some instances, data were available for 2021-22 and were included in the analysis. The data in these files do not correspond directly with scores published in ACE reports, but instead serve as the underlying basis for determining the final domain rating scores included in ACE reports. Furthermore, the analysis only examines data in the public files provided by CSO, and not the underlying data (e.g., charter school compliance reports and materials reviewed by CSO) used to produce the ratings. As a result, the ratings for metrics that are rated by the CSO using its scoring convention outlined in the Methodology section are taken at face value as it is not possible to reproduce the ratings or determine validity or fairness of the ratings given the scope and time available for this analysis.

Despite the aforementioned limitations, it is informative to identify patterns in rating scores received by Black-led charter schools and other charter schools as they may indicate areas where BLS experience inequities within the context of the charter school evaluation process and performance framework and given the socioeconomic realities of the students they serve and that Black-led organizations encounter. Understanding how BLS differs from OCS is critical for decision-makers evaluating the performance of these schools, especially given the ramifications of school closures on Black students and communities.



School Characteristics and Student Demographics

BLS in Philadelphia have smaller student populations. Across all years measured, average enrollment size at BLS is significantly lower than the enrollment size at OCS. For example, the average total number of students who attended a BLS was 633 in 2021-22 compared to 852 average total students enrolled at an OCS that same year. Overall, student enrollment is steady among BLS, with enrollment at an average 624 students in 2016-17 and 633 in 2021-22.

OCS have higher percentages of White, Hispanic, and Multiracial/Other race students. Percentages of Asian students did not differ significantly between BLS and OCS for all years measured. A steady increase in the percentages of economically disadvantaged students can be seen among both BLS and OCS.

The percentage of Black students enrolled is an additional important distinction between BLS and OCS. BLS enrolls more Black students. On average, the Black student population at BLS is 30 points higher than Black student enrollment at OCS across the six academic years (2016-17 – 2021-22) measured. For example, in academic year 2021-22, BLS had on average an 85% Black student population compared with 59% Black student population at OCS. The difference in Black student enrollment between OCS and BLS is statistically significant across all years. These demographic differences are important as school closures disproportionately displace Black and poor students. National research studies show that as the proportion of Black students in a charter school increases, the likelihood of closure increases.¹

¹ Paino, M et al. 2016. “The Closing Door: The Effect of Race on Charter School Closures.” *Sociological Perspectives*, 60(4): (<https://journals.sagepub.com/doi/10.1177/0731121416674948#body-ref-bibr71-0731121416674948>); National Center for Research on Education Access and School Choice. 2022. “Extreme Measures: POLICY BRIEF A National Descriptive Analysis of Closure and Restructuring of Traditional Public, Charter, and Private Schools.” <https://reachcentered.org/uploads/policybrief/REACH-National-Closure-Restructuring-2022-05-24.pdf>



Organizational Compliance and Viability

While BLS had lower percentages of schools than OCS meeting the standard across Organizational Compliance and Viability metrics, most of these differences were not statistically significant. There were 9 out of 25 indicators for Organizational Compliance and Viability where significant differences were observed in a given year for the following metrics: Board Accessibility, Certified Teachers, Code Due Process, EL Timely Evaluation, Statements of Financial Interest, Food Safety, Health Services Policy, Water Quality, and Sunshine Act. However there is no consistent metric where statistically significant differences in BLS or OCS not meeting the standard are observed. Across the majority of Organizational Compliance and Viability categories, in terms of percentages, most BLS and OCS are meeting Organizational Compliance and Viability standards.

Financial Health and Sustainability

While higher percentages of Does Not Meet ratings are observed for BLS across most of the Financial Health and Sustainability metrics, there is a clear pattern of continuing improvement in this domain for BLS. For example, whereas 50% of BLS did not meet the standard for Cash on Hand in academic year 2016-17, 96% met the standard for the 2020-21 academic year. Similar patterns are noted for Days Cash on Hand, Debt Ratio, Debt Service Ratio, Debt Position and Non-restricted Funds.

Academic Success

Across the five academic years (2016-17 through 2020-21) for which data are available, there are no statistically significant differences in attendance and absenteeism between BLS and OCS except for academic year 2020-21. In 2020-21, BLS experienced statistically significant lower attendance and higher chronic absenteeism percentages than OCS. This finding is consistent with data reported nationally, where schools with higher Black student populations experienced higher absenteeism rates due to the COVID-19 pandemic.

Post-secondary performance (first fall matriculation, 4-year cohort graduation, ACT/SAT performance) did not differ significantly between BLS and OCS. BLS had statistically significant lower percentages of schools than OCS performing proficiently in all Keystone subjects (Algebra, Biology, Literature) and PSSA Math.

Conclusions


BLS are distinct organizations in that they are not only Black-led but Black-serving. These schools are smaller in size and have significantly higher Black student populations. The smaller enrollment size may be due to limited capacity including financial and human resources to enroll more students. Not surprisingly, in our analysis, Financial Health and Sustainability is the domain where BLS rated lower on nearly all metrics. The data show, however, that BLS along with OCS are improving year-over-year across several metrics in the Financial Health and Sustainability domain. These metrics include Days Cash on Hand, Debt Ratio, Debt Service Ratio, Debt Position and Non-restricted Funds.

It is important to note however, that budget and resource disparities between the BLS schools and the OCS schools are unknown and unaccounted for in ACE data. Historically and today, Black-led organizations and institutions are chronically underfunded and they continue to face difficulty accessing capital needed to build organizational infrastructure that support sustainability and success. Budgets, particularly budgets that are sustained at an appropriate funding level over time, directly impact a school's ability to attract and retain quality teachers, student access to textbooks, computers and technology in the schools, student proficiency and learning gains, attendance and graduation rates.

While BLS are more likely to be rated as not meeting standards across the three evaluation domains (Academic Success, Organizational Compliance and Viability, and Financial Health and Sustainability), most of these differences are not statistically significant. The findings of this exploratory analysis suggest that BLS, as an aggregate, are not far in performance compared to OCS, but distinct in their focus on Black students, as evidenced by their Black student population.

Nationally, schools with a larger percentage of Black students are more likely to experience sanctions including school closures.² Recent national conversations have encouraged a move

² Paino, M et al. 2016. "The Closing Door: The Effect of Race on Charter School Closures." *Sociological Perspectives*, 60(4): (<https://journals.sagepub.com/doi/10.1177/0731121416674948#body-ref-bibr71-0731121416674948>); National Center for Research on Education Access and School Choice. "Extreme Measures: POLICY BRIEF A National Descriptive Analysis of Closure and Restructuring of Traditional Public, Charter, and Private Schools." <https://reachcentered.org/uploads/policybrief/REACH-National-Closure-Restructuring-2022-05-24.pdf>



from using assessment data as a way to punish schools.³ Evaluation frameworks, while useful for establishing common standards for goal setting and assessing performance, may reinforce systemic inequities if equity is not included as part of evaluation considerations. An emerging best practice is to use educational outcome data to identify and understand where systemic inequities persist and where additional resources including technical assistance may be needed. School performance data should be contextualized to enable decision-makers to fully consider how systematic racism and the accumulated disadvantages experienced among Black students, families and schools increase the likelihood that Black-led schools and schools composed of predominantly Black students will face closure.

³ Stanford, L. 2023. "Education Secretary: Standardized Tests Should No Longer Be a 'Hammer'" <https://www.edweek.org/policy-politics/education-secretary-standardized-tests-should-no-longer-be-a-hammer/2023/01>



Introduction

This exploratory analysis was conducted on behalf of Ballard Spahr LLP as part of the firm's investigation of the disproportionate closure of Black-led charter schools in the City of Philadelphia. The investigation includes examination of the Philadelphia School District's Charter School Office (CSO) evaluation policies, practices and framework.

The Annual Charter Evaluations (ACE) and Renewal Recommendation Reports (ACE-R) are produced by the CSO and are based on the Charter School Performance Framework. The Charter School Performance Framework is composed of three categories of evaluation: academic success, organizational compliance and viability, and financial health and sustainability.

Using ACE Public File data, the analysis outlined in this report compares rating scores received by Black-led charter schools (BLS) and other charter schools (OCS) across the three domains for the Charter School Performance Framework. The analysis only examines data in the public files provided by CSO, and not the underlying data (e.g., charter school compliance reports and materials reviewed by CSO) used to produce the ratings. As a result, the ratings for metrics that are rated by the CSO using its scoring methodology outlined below are taken at face value as it is not possible to reproduce the ratings or determine validity or fairness of the ratings given the information and time available for this analysis. Notwithstanding these limitations, it is valuable to identify any patterns in rating scores received by Black-led charter schools and other charter schools. Educational outcomes data including those presented in this report are often indicators of a broader set of socio-economic factors that should be further contextualized through interviews, storytelling and other research methodologies that provide a full picture of the dynamics that may underpin evaluation data. Application of a racial equity lens to the findings of this report should be used to explore how the unique experiences of Black-led charter schools and the students served by these schools, offer an opportunity for consideration of how evaluation processes and criteria might be reoriented to support the shared goal of equity articulated by the CSO and African American Charter School Coalition (the AACSC).

Methods

The datasets used in the analysis includes the ACE 2020-21 and 2021-22 Public Files provided by the District's Charter School Office. To compare Black-led schools with non-Black-led schools, a variable denoting Black-led and Other Charter Schools (non-Black-led) was created using a list of schools identified as Black-led by Ballard Spahr that: (1) were identified by the AACSC, (2) documents prepared by District employees; (3) self-identified as Black-led or "Black-founded"; and/or (4) were identified by the investigation team based on information in the public domain or in consultation with the District.

Overall frequencies of ratings and mean percentages for ACE metrics measured yearly from 2016-17 to 2020-21 were calculated for Black-led schools and other charter schools. Logistic regression using chi square tests were conducted to compare rating frequencies. T-tests were calculated to compare mean percentages between BLS and OCS. Test statistics were evaluated at a significance level of a p-value less than 0.05. Logistic regression is used to compare categorical variables (variables with values representing categories that have no meaningful order or numeric value) and t-tests are used to compare continuous variables (variables with numerical values). A chi square test investigates if the difference between observed and expected values is due to chance. In instances of cell sizes less than 5, a Fisher's Exact test statistic was used since it yields a more conservative p-value. The p-value is the probability that the observed difference between BLS and OCS is due to chance, so $p < 0.05$ means there is less than 5% probability that the observed difference between BLS and OCS is due to chance.

In the public files, Organizational Compliance and Viability metrics for each school were rated using the CSO's scoring convention:

- Zero (0) = Does Not Meet Standard
- Two (2) = Meets Standard

Summary Academic Success and Financial Health and Sustainability metrics for each school were rated using the following scoring convention:

- Zero (0) = Does Not Meet Standard
- One (1) = Approaches Standard
- Two (2) = Meets Standard

In this analysis, these variables were treated as categorical variables. For consistency in analyzing variables across the three evaluation domains, the “approaches standard” and “meets standard” categories were combined for analysis of the Academic Success and Financial Health and Sustainability metrics. This allowed us to perform a chi square test for metrics in all three categories, as dichotomous variables (variables with two response choices) are needed for chi square analysis.

Data were analyzed using SAS.

School Characteristics

Average enrollment for Black-led schools and other charter schools is presented in Table 1. The average total number of students who attended a BLS was 633 in 2021-22 compared to 852 average total students enrolled at an OCS that same year. Overall, student enrollment is steady among BLS, with enrollment at an average 624 students in 2016-17 and 633 in 2021-22. The average enrollment at an OCS also remained steady at 846 (2016-17) and 852 (2021-22) students. There is a statistically significant difference in enrollment size between BLS and OCS for each year measured.

Table 1. Average Student Enrollment Among Black-led Charter Schools and Other Charter Schools in Philadelphia, 2016-2022

	2016-17		2017-18		2018-19		2019-20		2020-21		2021-22	
	BLS (n=28)	OCS (n=52)	BLS (n=28)	OCS (n=52)	BLS (n=28)	OCS (n=55)	BLS (n=28)	OCS (n=57)	BLS (n=28)	OCS (n=57)	BLS (n=25)	OCS (n=55)
	Mean	Mean	Mean	Mean	Mean	Mean	Mean	Mean	Mean	Mean	Mean	Mean
Enrollment	624.1*	845.5*	630.3*	863.8*	641.5*	840.2*	636.8*	849.5*	641.1*	868.4*	632.7*	851.7*

Data Source: School District of Philadelphia, ACE Public Files 2020-21 and 2021-22

* Indicates a statistically significant difference between the two groups at a p-value of 0.05.



Student Demographics

The dataset included information on students' race and ethnicity, economic status, the number of English language learners, and the number of students receiving special education services. School demographics, for years 2016-17 – 2021-22, are shown in Table 2. For all years measured, BLS had significantly higher percentages of Black students and OCS had higher percentages of White, Hispanic, and Multiracial/Other race students. On average, the Black student population at BLS is 30 points higher than Black student enrollment at OCS across the six academic years. Percentages of Asian students did not differ significantly between BLS and OCS for all years measured. Data for English Language Learner Students was missing for the year 2020-21, and data for Economically Disadvantaged Students was missing for the year 2021-22. There was no significant difference in percentages of English Learner Students between BLS and OCS. A steady increase in the percentages of economically disadvantaged students can be seen among both BLS and OCS. There was no statistically significant difference in percentages of Special Education Students between BLS and OCS.

Table 2. Average Student Demographics Among Black-led Charter Schools and Other Charter Schools in Philadelphia, 2016-2022

Demographics	2016-17		2017-18		2018-19		2019-20		2020-21		2021-22	
	BLS (n=28)	OCS (n=57)	BLS (n=28)	OCS (n=57)	BLS (n=28)	OCS (n=57)	BLS (n=28)	OCS (n=57)	BLS (n=28)	OCS (n=57)	BLS (n=28)	OCS (n=57)
	%	%	%	%	%	%	%	%	%	%	%	%
Student Race and Ethnicity												
Black	87.0*	53.9*	86.5*	53.9*	86.6*	57.3*	86.8*	57.8*	86.9*	58.8*	85.4*	59.3*
White	2.5*	14.7*	2.6*	14.3*	2.4*	13.7*	2.4*	13.3*	3.0*	14.1*	2.5*	12.6*
Asian	2.2	3.7	2.2	3.7	2.2	3.6	2.1	3.6	3.0	4.1	2.2	3.8
Hispanic	4.8*	18.7*	5.0*	19.0*	5.0*	19.5*	5.4*	19.4*	5.7*	24.5*	6.4*	18.2*
Multi-racial /Other race	3.4	5.3	3.6	5.4	3.6	5.8	3.5	5.9	3.2*	5.3*	3.2*	6.0*
Economically Disadvantaged Students	63.6	62.7	67.0	61.8	69.8	68.9	71.6	70.1	75.2	72.3	--	--
English Language Learner Students	2.7	4.5	3.0	4.8	2.6	5.5	3.1	5.9	--	--	4.5	6.1
Special Education Students	16.3	19.0	17.4	20.2	18.7	22.4	19.0	22.4	18.1	20.4	19.0	22.1

Data Source: School District of Philadelphia, ACE Public Files 2020-21 and 2021-22

-- Indicates that no data was available for the academic year.

* Indicates a statistically significant difference between the two groups at a p-value of 0.05.



Summary Academic Ratings

Summary academic performance metrics included AGI for all students, AGI for lowest performing students, attendance at K-8 and high schools, post-secondary performance, and proficiency. Each school receives a rating for these summary academic performance metrics, with a score of two for meets the standard, one for approaches standard, and zero for does not meet the standard. As noted in the methodology, for purposes of analysis, meets standard and approaches standards were combined so that Chi square tests could be performed.

AGI All Students

AGI All Students is defined as growth in PSSA (ELA, Math, 4th grade Science, 8th grade Science) and Keystone (Algebra, Biology, Literature) subjects. Data for AGI All Students is shown in Table 3 and was only available for three years, 2016-17 – 2018-19. For all three time periods there was no statistically significant difference in growth between BLS and OCS, with the exception of PSSA Math during the years of 2017-18 and PSSA Science for 4th grade students 2018-19. Regarding PSSA Math in 2017-18, BLS had a higher percentage of schools not meeting the standard than OCS (41.7% vs 15.6%; $p < 0.05$). During the 2018-19 year BLS had a higher percentage of schools not meeting the standard for PSSA Science for 4th grade students than OCS (95.0% vs 59.5%; $p < 0.05$). There was no data collected in the 2019-20 and 2020-21 academic years.

Table 3. Summary Indicator Ratings Among Black-led Charter Schools and Other Charter Schools in Philadelphia, 2016-2021

Summary Ratings: AGI All Students	2016-17				2017-18				2018-19			
	BLS		OCS		BLS		OCS		BLS		OCS	
	N	%	N	%	N	%	N	%	N	%	N	%
Keystone Algebra AGI Rating												
Does Not Meet Standard	6	75.0	12	54.5	5	50.0	6	24.0	3	30.0	4	16.7
Approaches or Meets Standard	2	25.0	10	45.5	5	50.0	19	76.0	7	70.0	20	83.3
Keystone Biology AGI Rating												
Does Not Meet Standard	5	62.5	8	36.4	3	37.5	8	36.4	3	37.5	5	21.7
Approaches or Meets Standard	3	37.5	14	63.6	5	62.5	14	63.6	5	62.5	18	78.3
Keystone Literature AGI Rating												
Does Not Meet Standard	5	62.5	7	31.8	4	50.0	6	27.3	3	37.5	4	17.4
Approaches or Meets Standard	3	37.5	15	68.2	4	50.0	16	72.7	5	62.5	19	82.6
PSSA ELA AGI Rating												
Does Not Meet Standard	2	8.3	7	16.7	6	25.0	7	15.6	3	12.5	7	15.2
Approaches or Meets Standard	22	91.7	35	83.3	18	75.0	38	84.4	21	87.5	39	84.8
PSSA Math AGI Rating												
Does Not Meet Standard	9	37.5	7	16.7	10	41.7*	7	15.6*	3	12.5	13	28.3
Approaches or Meets Standard	15	62.5	35	83.3	14	58.3	38	84.4	21	87.5	33	71.7
PSSA Science AGI Rating <i>4th Grade Students</i>												

	BLS		OCS		BLS		OCS		BLS		OCS	
	N	%	N	%	N	%	N	%	N	%	N	%
Does Not Meet Standard	13	65.0	25	75.8	16	80.0	27	75.0	19	95.0*	22	59.5*
Approaches or Meets Standard	7	35.0	8	24.2	4	20.0	9	25.0	1	5.0	15	40.5
PSSA Science AGI Rating												
<i>8th Grade Students</i>												
Does Not Meet Standard	11	47.8	11	30.6	7	30.4	15	41.7	7	30.4	17	46.0
Approaches or Meets Standard	12	52.2	25	69.4	16	69.6	21	58.3	16	69.6	20	54.0
Data Source: School District of Philadelphia, ACE Public Files 2020-21 and 2021-22												
-- Indicates that no data was available for the academic year.												
* Indicates a statistically significant difference between the two groups at a p-value of 0.05.												

AGI Lowest Performing Students

AGI lowest performing students data are shown in Table 4 and include measures in PSSA (ELA, Math, 4th grade Science, 8th grade Science) and Keystone (Algebra, Biology, Literature) subjects. Lowest performing students’ rating scores for growth were only available for three years, 2016-17 – 2018-19. For all three time periods there was no statistically significant difference in growth ratings between BLS and OCS, with the exception of PSSA Math for lowest performing students during the years of 2016-17 and 2017-18. In these years BLS had a higher percentage of schools rated as not meeting the standard, compared to OCS (2016-17: 52.4% vs 19.5%, 2017-18: 37.2% vs 14.0%; $p < 0.05$). There was no data collected in the 2019-20 and 2020-21 academic years.

Table 4. Summary Indicator Ratings Among Black-led Charter Schools and Other Charter Schools in Philadelphia, 2016-2021

Summary Ratings: AGI Lowest Performing Students	2016-17				2017-18				2018-19			
	BLS		OCS		BLS		OCS		BLS		OCS	
	N	%	N	%	N	%	N	%	N	%	N	%
Keystone Algebra AGI Rating <i>Lowest Performing Students</i>												
Does Not Meet Standard	0	0.0	2	9.5	1	14.3	5	22.7	0	0.0	2	8.7
Approaches or Meets Standard	7	100.0	19	90.5	6	85.7	17	77.3	8	100.0	21	91.3
Keystone Biology AGI Rating <i>Lowest Performing Students</i>												
Does Not Meet Standard	0	0.0	2	9.1	1	14.3	2	9.1	0	0.0	2	8.7
Approaches or Meets Standard	6	100.0	20	90.9	6	85.7	20	90.9	8	100.0	20	91.3
	BLS		OCS		BLS		OCS		BLS		OCS	
	N	%	N	%	N	%	N	%	N	%	N	%
Keystone Literature AGI Rating <i>Lowest Performing Students</i>												
Does Not Meet Standard	3	42.9	5	22.7	4	66.7	7	31.8	2	25.0	8	34.8
Approaches or Meets Standard	4	57.1	17	77.3	2	33.3	15	68.2	6	75.0	15	65.2
PSSA ELA AGI Rating <i>Lowest Performing Students</i>												
Does Not Meet Standard	1	4.8	7	17.1	6	25.0	7	16.3	2	8.3	11	24.4
Approaches or Meets Standard	20	95.2	34	82.9	18	75.0	36	83.7	22	91.7	34	75.6
PSSA Math AGI Rating <i>Lowest Performing Students</i>												

Does Not Meet Standard	11	52.4*	8	19.5*	9	37.2*	6	14.0*	2	8.3	6	13.3
Approaches or Meets Standard	10	47.6	33	80.5	15	62.5	37	86.0	22	91.7	39	86.7
PSSA Science AGI Rating <i>Lowest Performing 4th Grade Students</i>												
Does Not Meet Standard	5	31.3	5	16.1	13	65.0	16	47.1	11	55.0	14	38.9
Approaches or Meets Standard	11	68.7	26	83.9	7	35.0	18	52.9	9	45.0	22	61.1
PSSA Science AGI Rating <i>Lowest Performing 8th Grade Students</i>												
Does Not Meet Standard	1	7.7	0	0.0	0	0.0	3	8.3	0	0.0	1	2.7
Approaches or Meets Standard	12	92.3	33	100.0	23	100.0	33	91.7	23	100.0	36	97.3
Data Source: School District of Philadelphia, ACE Public Files 2020-21 and 2021-22												
-- Indicates that no data was available for the academic year.												
* Indicates a statistically significant difference between the two groups at a p-value of 0.05.												

Attendance (High School and k-8)

Attendance and chronic absenteeism rating scores were available for all years measured, 2016-17 – 2020-21, except year 2019-2020. Chronic absenteeism is defined as the percentage of students attending less than 90% of instructional days at or below the District average and at or below the similar schools average. For all time periods measured there was no statistically significant difference in attendance between BLS and OCS, with the exception of attendance and chronic absenteeism for K-8 in the year 2020-21. During this year BLS had a significantly higher percentage of schools rated as not meeting the standard, compared to OCS (Attendance: 63.6% vs 36.0%, Absenteeism: 59.1% vs 28.0%; $p < 0.05$).

Table 5. Summary Indicator Ratings Among Black-led Charter Schools and Other Charter Schools in Philadelphia, 2016-2021~

Summary Ratings: Attendance	2016-17				2017-18				2018-19				2020-21				
	BLS		OCS		BLS		OCS		BLS		OCS		BLS		OCS		
	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%	
Regular Attendance Rating <i>High School</i>																	
Does Not Meet Standard	2	25.0	5	21.7	4	50.0	8	33.3	2	25.0	9	37.5	5	62.5	10	43.5	
Approaches or Meets Standard	6	75.0	18	78.3	4	50.0	16	66.7	6	75.0	15	62.5	3	37.5	13	56.5	
Regular Attendance Rating <i>K-8</i>																	
Does Not Meet Standard	2	8.3	5	11.1	3	12.5	7	15.2	3	12.5	12	24.5	14	63.6*	18	36.0*	
Approaches or Meets Standard	22	91.7	40	88.9	21	87.5	39	84.8	21	87.5	37	75.5	8	36.4	32	64.0	
Chronic Absenteeism Rating <i>High School</i>																	
Does Not Meet Standard	0	0.0	3	13.0	3	37.5	6	25.0	1	12.5	5	20.8	4	50.0	8	33.3	
Approaches or Meets Standard	8	100.0	20	87.0	5	62.5	18	75.0	7	87.5	19	79.2	4	50.0	16	66.7	
Chronic Absenteeism Rating <i>K-8</i>																	
Does Not Meet	1	4.2	2	4.4	2	8.3	7	15.2	6	25.0	9	18.4	13	59.1*	14	28.0*	

Standard																	
Approaches or Meets Standard	23	95.8	43	95.6	22	91.7	39	84.8	18	75.0	40	81.6	9	40.9	36	72.0	

Data Source: School District of Philadelphia, ACE Public Files 2020-21 and 2021-22
 ~ Indicates there was no data available for the 2019-2020 academic year
 * Indicates a statistically significant difference between the two groups at a p-value of 0.05.

Post-secondary Performance

Post-secondary performance data are shown in Table 6 and include first fall matriculation (defined as first fall college matriculation rates at or above the District average or similar schools average), 4-year cohort graduation (defined as cohorts of students graduating within 4 years), and ACT/SAT performance. Rating scores for first fall matriculation and 4-year cohort graduation data were available for all school years measured except 2019-20. ACT/SAT performance data were only available for three years, 2016-17, 2017-2018 and 2018-19. There was no data collected for ACT/SAT performance in the 2019-20 or 2020-21 years. For all four time periods there was no statistically significant difference in performance between BLS and OCS for first-fall matriculation and 4-year cohort graduation. Regarding ACT/SAT scores in the year 2018-19, BLS had a significantly higher percentage of schools not meeting the standard than OCS (75.0% vs 27.3%; $p < 0.05$).

Table 6. Summary Indicator Ratings Among Black-led Charter Schools and Other Charter Schools in Philadelphia, 2016-2021~

Summary Ratings: Post-secondary Performance	2016-17				2017-18				2018-19				2020-21				
	BLS		OCS		BLS		OCS		BLS		OCS		BLS		OCS		
	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%	
First Fall Matriculation Rating																	
Does Not Meet Standard	0	0.0	4	18.2	1	16.7	3	13.6	3	37.5	4	18.2	3	37.5	2	9.1	
Approaches or Meets Standard	6	100.0	18	81.8	5	83.3	19	86.4	5	62.5	18	81.8	5	62.5	20	90.9	
4-Year Cohort Graduation Rating																	
Does Not Meet Standard	1	16.7	2	9.1	0	0.0	2	9.1	2	25.0	2	9.1	0	0.0	0	0.0	
Approaches or Meets Standard	5	83.3	20	90.9	6	100.0	20	90.9	6	75.0	20	90.9	8	100.0	22	100.0	
ACT & SAT Rating																	
Does Not Meet Standard	4	66.7	10	45.5	2	33.3	8	36.4	6	75.0*	6	27.3*	--	--	--	--	
Approaches or Meets Standard	2	33.3	12	54.5	4	66.7	14	63.6	2	25.0	16	72.7	--	--	--	--	

Data Source: School District of Philadelphia, ACE Public Files 2020-21 and 2021-22

~ Indicates there was no data available for the 2019-2020 academic year

-- Indicates that no data was available for the academic year.

* Indicates a statistically significant difference between the two groups at a p-value of 0.05.

Proficiency

Proficiency is measured as the amount of students scoring at or above the District average and at or above the similar schools average for the same grades served by the school for Keystone test (Algebra, Biology, and Literature) and the PSSA (ELA, Math, and Science). Data were only available for three years, 2016-17 – 2018-19. During the 2017-18 year BLS had a higher percentage of schools rated as not meeting the standard for Keystone subjects than OCS (Algebra: 71.4% vs 22.7%, Biology: 71.4% vs 18.2%, Literature: 71.4% vs 22.7%; $p < 0.05$). For the PSSA subjects of ELA and Math, BLS had a higher percentage of schools not meeting the standard for Keystone subjects than OCS for the years 2018-19 and 2017-18, respectively (ELA 2018-19: 45.8% vs 17.4%, Math 2017-18: 58.3% vs 26.7%; $p < 0.05$).

Table 7. Summary Indicator Ratings Among Black-led Charter Schools and Other Charter Schools in Philadelphia, 2016-2019

Summary Ratings: Proficiency	2016-17				2017-18				2018-19			
	BLS		OCS		BLS		OCS		BLS		OCS	
	N	%	N	%	N	%	N	%	N	%	N	%
Keystone Algebra Proficiency Rating												
Does Not Meet Standard	2	33.3	3	13.6	5	71.4*	5	22.7*	3	37.5	4	18.2
Approaches or Meets Standard	4	66.7	19	86.4	2	28.6	17	77.3	5	62.5	18	81.8
Keystone Biology Proficiency Rating												
Does Not Meet Standard	3	50.0	7	31.8	5	71.4*	4	18.2*	4	50.0	6	27.3
Approaches or	3	50.0	15	68.2	2	28.6	18	81.8	4	50.0	16	72.7

Meets Standard												
Keystone Literature Proficiency Rating												
	BLS		OCS		BLS		OCS		BLS		OCS	
	N	%	N	%	N	%	N	%	N	%	N	%
Does Not Meet Standard	3	50.0	3	13.6	5	71.4*	5	22.7*	2	25.0	4	18.2
Approaches or Meets Standard	3	50.0	19	86.4	2	28.6	17	77.3	6	75.0	18	81.8
PSSA ELA Proficiency Rating												
Does Not Meet Standard	7	29.2	5	11.6	9	37.5	7	15.6	11	45.8*	8	17.4*
Approaches or Meets Standard	17	70.8	38	88.4	15	62.5	38	84.4	13	54.2	38	82.6
PSSA Math Proficiency Rating												
Does Not Meet Standard	11	45.8	16	37.2	14	58.3*	12	26.7*	13	54.2	17	37.0
Approaches or Meets Standard	13	54.2	27	62.8	10	41.7	33	73.3	11	45.8	29	63.0
PSSA Science Proficiency Rating												
Does Not Meet Standard	4	16.7	8	19.5	6	25.0	12	26.7	7	29.2	10	21.7
Approaches or Meets Standard	20	83.3	33	80.5	18	75.0	33	73.3	17	70.8	36	78.3

Data Source: School District of Philadelphia, ACE Public Files 2020-21 and 2021-22

-- Indicates that no data was available for the academic year.

* Indicates a statistically significant difference between the two groups at a p-value of 0.05.



Organizational Compliance and Viability

Organizational compliance and viability metrics for each school were rated as zero (does not meet standard) or two (meets standard). The distribution of these ratings by charter school type for all 25 organizational compliance metrics are shown in Table 8.

Overall, ratings for most metrics did not differ significantly between BLS and OCS. The few indicators that did differ significantly are identified with their respective year of measurement.

Special Education

This metric includes two indicators: Childfind Notices, defined as having a Child Find policy that includes language regarding required public awareness and systematic screening on the school's website, and Manifestation Determination, whereas the school implements a discipline process that complies with PA regulations for students with disabilities, including evidence that when a change of placement is considered, a meeting takes place within 10 days with parent/guardian participation to determine whether the behavior was caused by the student's disability or was the result of failure to implement the IEP. For all four time periods there was no statistically significant difference in ratings for Childfind Notices and Manifestation Determination between BLS and OCS, but BLS had increasing percentages of schools meeting the standard for these indicators.

Table 8. Organizational Compliance Indicator Ratings Among Black-led Charter Schools and Other Charter Schools in Philadelphia, 2017-2021

Organizational Compliance: Special Education	2017-18				2018-19				2019-20				2020-21				
	BLS		OCS		BLS		OCS		BLS		OCS		BLS		OCS		
	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%	
Childfind Notice Rating																	
Does Not Meet Standard	4	15.4	5	9.4	1	3.8	2	3.8	1	3.9	0	0.0	2	7.7	0	0.0	
Meets Standard	22	84.6	48	90.6	25	96.1	51	96.2	25	96.1	55	100.0	24	92.3	55	100.0	
Manifest Determination Rating																	
Does Not Meet Standard	1	3.9	1	1.9	0	0.0	1	1.9	0	0.0	0	0.0	0	0.0	0	0.0	
Meets Standard	25	96.1	52	98.1	26	100.0	52	98.1	28	100.0	57	100.0	26	100.0	55	100.0	

Data Source: School District of Philadelphia, ACE Public Files 2020-21 and 2021-22

English Learners

English Learners data are displayed in Table 9. There are three indicators in this category, ESL Access (the school administers the ACCESS for ELs assessment to each student identified as needing English Language support), ESL Policy (the policy indicates the school implements an appropriate and timely process for identifying English Learners (ELs), implements PDE-approved

LIEP programs, and adheres to reclassification and monitoring requirements) and EL Timely Evaluation (the school administers the grade-appropriate screener and places English Learners into a LIEP within the first 30 days of school or within 14 days of enrollment if a student enrolls after the first day of school). Data for ESL ACCESS was only available for three years 2017-18 – 2019-20.

For each year measured, there was no statistically significant difference in ESL ACCESS ratings for BLS and OCS. Regarding ESL Policy and EL Timely Evaluation, BLS had a significantly higher percentage of schools not meeting the standard for EL Timely Evaluation during the year 2018-19, compared to OCS (35.3% vs 6.4%; $p < 0.05$).

Table 9. Organizational Compliance Indicator Ratings Among Black-led Charter Schools and Other Charter Schools in Philadelphia, 2017-2021


Organizational Compliance: English Learners	2017-18				2018-19				2019-20				2020-21				
	BLS		OCS		BLS		OCS		BLS		OCS		BLS		OCS		
	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%	
ESL ACCESS Rating																	
Does Not Meet Standard	3	21.4	8	17.8	2	11.8	7	14.9	0	0.0	5	10.0	--	--	--	--	
Meets Standard	11	78.6	37	82.2	15	88.2	40	85.1	17	100.0	45	90.0	--	--	--	--	
ESL Policy Rating																	
Does Not Meet Standard	3	11.5	2	3.9	1	3.9	6	11.3	3	10.7	1	1.8	6	23.1	4	7.3	
Meets Standard	23	88.5	50	96.1	25	96.1	47	88.7	25	89.3	56	98.2	20	76.9	51	92.7	
EL Timely																	

Evaluation Rating																
Does Not Meet Standard	4	28.6	5	11.1	6	35.3*	3	6.4*	2	11.8	5	10.0	2	13.3	7	14.3
Meets Standard	10	71.4	40	88.9	11	64.7	44	93.6	15	88.2	45	90.0	13	86.7	42	85.7
Data Source: School District of Philadelphia, ACE Public Files 2020-21 and 2021-22																
-- Indicates that no data was available for the academic year.																
* Indicates a statistically significant difference between the two groups at a p-value of 0.05.																

Enrollment

This category includes four indicators: Enrollment Accessibility (enrollment policy complies with Pennsylvania regulations on student enrollment, including no additional mandatory paperwork or steps for families beyond what can be required, recognition of a lottery process if needed, and in compliance with the preferences articulated in the school’s charter agreement), Student Application (student application requires only the following fields: student name, address, DOB and/or age, gender, grade applying for, current school and grade; parent/legal guardian name, relationship to student, relationship to school if applicable, contact information; sibling name(s), school, grade; and admissions criteria questions, if outlined in charter agreement), Enrollment Materials (enrollment materials only require proof of age and residency, home language survey, immunization record and parent registration statements to enroll. No prohibited items as defined by PDE are included. The school accepts at least two sources of documentation as identified in the PDE BEC “Enrollment of Students” to demonstrate proof of age and proof of residency), and Enrollment Policy (the school ensures that children and families with limited English proficiency are provided translation and interpretation services to the extent needed to help the family understand the enrollment process and enroll the student in school promptly).

Data for Enrollment Accessibility and Student Application are displayed in Table 10 and were only available for three years 2017-18 – 2019-20. For each year measured, there was no



statistically significant difference in ratings for all four metrics between BLS and OCS. BLS consistently had more schools meeting the standard for Enrollment Materials than OCS.

Table 10. Organizational Compliance Indicator Ratings Among Black-led Charter Schools and Other Charter Schools in Philadelphia, 2017-2021

Organizational Compliance: Enrollment	2017-18				2018-19				2019-20				2020-21			
	BLS		OCS		BLS		OCS		BLS		OCS		BLS		OCS	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Enrollment Accessibility Rating																
Does Not Meet Standard	3	11.5	3	5.7	0	0.0	3	5.6	4	14.3	2	3.5	--	--	--	--
Meets Standard	23	88.5	50	94.3	26	100.0	51	94.4	24	85.7	55	96.5	--	--	--	--
Enrollment Student Application Rating																
Does Not Meet Standard	0	0.0	0	0.0	1	3.9	0	0.0	2	7.1	1	1.8	--	--	--	--
Meets Standard	26	100.0	53	100.0	25	96.1	54	100.0	26	92.9	56	98.2	--	--	--	--
Enrollment Materials Rating																
Does Not Meet Standard	1	3.9	8	15.1	3	11.5	8	14.8	3	10.7	10	17.5	7	26.9	14	25.5
Meets Standard	25	96.1	45	84.9	23	88.5	46	85.2	25	89.3	47	82.5	19	73.1	41	74.5
Enrollment Policy Rating																
Does Not Meet Standard	3	11.5	3	5.7	0	0.0	3	5.6	1	3.6	3	5.3	7	26.9	13	23.6
Meets Standard	23	88.5	50	94.3	26	100.0	51	94.4	27	96.4	54	94.7	19	73.1	42	76.4
Data Source: School District of Philadelphia, ACE Public Files 2020-21 and 2021-22																
-- Indicates that no data was available for the academic year.																

Student Discipline

Two indicators, Code Due Process (the Code of Conduct identifies all student due process rights codified in Chapter 12 of PA Public School Code, including those related to long-term suspensions and expulsions, such as formal and informal hearing and appeal rights) and Truancy Policy (the school's truancy policy and Code of Conduct require an attendance conference before referral of truancy matters to a legal entity and prohibits suspension, expulsion or transfer due to truant behavior), were included in this category. For all years measured, there were no statistically significant differences in ratings regarding Truancy Policy, between BLS and OCS. For the year 2018-19 BLS had a higher percentage of schools not meeting the standard for Code Due Process, compared to OCS (42.3% vs 13.2%; $p < 0.05$).

Table 11. Organizational Compliance Indicator Ratings Among Black-led Charter Schools and Other Charter Schools in Philadelphia, 2017-2021

Organizational Compliance: Student Discipline	2017-18				2018-19				2019-20				2020-21			
	BLS		OCS		BLS		OCS		BLS		OCS		BLS		OCS	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Code Due Process Rating																
Does Not Meet Standard	6	23.1	4	7.6	11	42.3*	7	13.2*	4	14.3	3	5.3	0	0.0	1	1.8
Meets Standard	20	76.9	49	92.4	15	57.7	46	86.8	24	85.7	54	94.7	26	100.0	54	98.2
Truancy Policy Rating																
Does Not Meet Standard	5	19.2	9	17.0	2	7.7	2	3.9	0	0.0	1	1.8	0	0.0	0	0.0
Meets Standard	21	80.8	44	83.0	24	92.3	50	96.1	28	100.0	55	98.2	26	100.0	54	100.0

Data Source: School District of Philadelphia, ACE Public Files 2020-21 and 2021-22

* Indicates a statistically significant difference between the two groups at a p-value of 0.05.

Personnel

This category includes four indicators: Certified ESL Teachers (the school had at least one ESL student enrolled and employed an appropriately certified ESL instructor during the school year), Certified Instructional Leader (the school employed an appropriately certified instructional leader), Certified SpEd Teachers (all of the school's special education teachers were appropriately certified), and Certified Teachers (all of the school's teachers were appropriately certified).

Data for Certified Teachers were only available for two years 2017-18 – 2018-19. Regarding the metrics Certified ESL Teachers, Certified Instructional Leader, Certified SpEd Teachers, there was no statistically significant difference in ratings for all four years measured for BLS and OCS. But there was an overall increase in percentages of BLS meeting the standard for Certified ESL Teachers and Certified Instructional Leader. For the year 2018-19 BLS had a higher percentage of schools not meeting the standard for Certified Teachers, compared to OCS (15.3% vs 1.9%; $p < 0.05$). Personnel data are shown in Table 12.

Table 12. Organizational Compliance Indicator Ratings Among Black-led Charter Schools and Other Charter Schools in Philadelphia, 2017-2021

Organizational Compliance: Personnel	2017-18				2018-19				2019-20				2020-21			
	BLS		OCS		BLS		OCS		BLS		OCS		BLS		OCS	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Certified ESL Teachers Rating																
Does Not Meet Standard	2	14.3	1	2.2	1	5.9	0	0.0	0	0.0	2	3.8	0	0.0	3	5.9
Meets Standard	12	85.7	44	97.8	16	94.1	46	100.0	19	100.0	51	96.2	18	100.0	48	94.1
Certified Instructional Leader Rating																
Does Not Meet Standard	1	3.9	0	0.0	0	0.0	0	0.0	2	7.1	1	1.8	0	0.0	0	0.0

Meets Standard	25	96.1	49	100.0	26	100.0	53	100.0	26	92.9	56	98.2	26	100.0	55	100.0
Certified SpEd Teachers Rating																
Does Not Meet Standard	4	15.4	7	14.0	6	23.1	9	17.0	6	21.4	12	21.1	8	30.8	9	16.4
Meets Standard	22	84.6	43	86.0	20	76.9	44	83.0	22	78.6	45	78.9	18	69.2	46	83.6
Certified Teachers Rating																
Does Not Meet Standard	3	11.5	1	2.0	4	15.3*	1	1.9*	--	--	--	--	--	--	--	--
Meets Standard	23	88.5	49	98.0	22	84.6	52	98.1	--	--	--	--	--	--	--	--

Data Source: School District of Philadelphia, ACE Public Files 2020-21 and 2021-22


-- Indicates that no data was available for the academic year.

* Indicates a statistically significant difference between the two groups at a p-value of 0.05.

Food, Health and Safety

Food, Health and Safety data are shown in Table 13. There are four indicators in this category: Emergency Preparedness (the school has a complete and up-to-date fire safety and evacuation plan, completed all the required emergency evacuation drills in a timely manner and has no violations related to its fire suppression systems), Food Safety (the school was found to be in satisfactory compliance for all inspections conducted by an inspector from the Office of Food Protection), Health Services Policy (the school's health services policy clearly outlines all mandated student health services and a process for ensuring compliance with student immunization requirements), and Water Quality (the school is in compliance with applicable water quality requirements of the Pennsylvania Board of Health and the school's most recent water quality testing has been posted to its publicly available website).

Data for Water Quality was only available for three years 2018-19 – 2020-21. Regarding Emergency Preparedness, there was no statistically significant difference in ratings for all four years measured for BLS and OCS. For the years 2018-19 and 2019-20 BLS had a higher percentage of schools rated as not meeting the standard for Food Safety, compared to OCS (2018-19: 60.0% vs 32.7%, 2019-20: 64.0% vs 32.7%; $p < 0.05$). During the 2018-19 year BLS had



a higher percentage of schools not meeting the standard for Health Services Policy and Water Quality, compared to OCS (HSP: 61.5% vs 20.8%, WQ: 42.3% vs 18.9%; $p < 0.05$).

Table 13. Organizational Compliance Indicator Ratings Among Black-led Charter Schools and Other Charter Schools in Philadelphia, 2017-2021

Organizational Compliance: Food, Health, and Safety	2017-18				2018-19				2019-20				2020-21			
	BLS		OCS		BLS		OCS		BLS		OCS		BLS		OCS	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Emergency Preparedness Rating																
Does Not Meet Standard	6	23.1	16	32.0	6	23.1	10	19.6	4	14.3	9	15.8	8	30.8	14	25.5
Meets Standard	20	76.9	34	68.0	20	76.9	41	80.4	24	85.7	48	84.2	18	69.2	41	74.5
Food Safety Rating																
Does Not Meet Standard	16	64.0	24	50.0	15	60.0*	16	32.7*	16	64.0*	17	32.7*	5	29.4	9	19.2
Meets Standard	9	36.0	24	50.0	10	40.0	33	67.3	9	36.0	35	67.3	12	70.6	38	80.8
Health Services Policy Rating																
Does Not Meet Standard	7	26.9	13	24.5	16	61.5*	11	20.8*	0	0.0	5	8.8	1	3.9	1	1.8
Meets Standard	19	73.1	40	75.5	10	38.5	42	79.2	28	100.0	52	91.2	25	96.1	54	98.2
Water Quality Rating																
Does Not Meet Standard	--	--	--	--	11	42.3*	10	18.9*	2	7.1	0	0.0	2	7.7	0	0.0
Meets Standard	--	--	--	--	15	57.7	43	81.1	26	92.9	57	100.0	24	92.3	55	100.0

Data Source: School District of Philadelphia, ACE Public Files 2020-21 and 2021-22

-- Indicates that no data was available for the academic year.

* Indicates a statistically significant difference between the two groups at a p-value of 0.05.



Board Governance

This category includes four indicators: Statements of Financial Interest (Statements of Financial Interest are completed accurately and timely for all Board members and school administrators), Board Accessibility (the school provides a reasonable opportunity for members of the public to comment), Board Oversight (approved minutes for board meetings indicate votes on the school's budget, personnel salaries, and the school calendar), and Sunshine Act (approved minutes for each board meeting note the time, place, and date of the meeting; identify board members in attendance; record public citizens and the subject of their testimony; and do not indicate non-compliant use of executive session).

For Statements of Financial Interest, in 2017-18 BLS had a higher percentage of schools rated as not meeting the standard, compared to OCS (61.5% vs 25.0%; $p < 0.05$). But in the year 2019-20 BLS had a higher percentage of schools meeting the standard for Statements of Financial Interest, compared to OCS (96.4% vs 77.2%; $p < 0.05$). This shows the increasing trend of BLS meeting the standard for Statements of Financial Interest. During the 2020-21 year BLS had a higher percentage of schools not meeting the standard for Board Accessibility, compared to OCS (30.8% vs 7.3%; $p < 0.05$). There was no statistically significant difference in ratings for Board Oversight for all four years measured for BLS and OCS. For the year 2017-18, BLS had a higher percentage of schools not meeting the standard for Sunshine Act, compared to OCS (46.2% vs 19.2%; $p < 0.05$). But, overall BLS and OCS have increasing percentages of schools meeting the standard for Sunshine Act.

Board Governance data is shown in Table 14.

Table 14. Organizational Compliance Indicator Ratings Among Black-led Charter Schools and Other Charter Schools in Philadelphia, 2017-2021

Organizational Compliance: Board Governance	2017-18				2018-19				2019-20				2020-21				
	BLS		OCS		BLS		OCS		BLS		OCS		BLS		OCS		
	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%	
Statements of Financial Interest Rating																	
Does Not Meet Standard	16	61.5*	13	25.0*	13	50.0	34	64.2	1	3.6	13	22.8	4	15.4	7	12.7	
Meets Standard	10	38.5	39	75.0	13	50.0	19	35.8	27	96.4*	44	77.2*	22	84.6	48	87.3	
Board Accessibility Rating																	
Does Not Meet Standard	0	0.0	2	4.0	1	3.9	6	11.3	3	10.7	5	8.8	8	30.8*	4	7.3*	
Meets Standard	26	100.0	48	96.0	25	96.1	47	88.7	25	89.3	52	91.2	18	69.2	51	92.7	
Board Oversight Rating																	
Does Not Meet Standard	4	15.4	7	13.5	0	0.0	1	1.9	3	10.7	4	7.0	4	15.4	4	7.3	
Meets Standard	22	84.6	45	86.5	26	100.0	52	98.1	25	89.3	53	93.0	22	84.6	51	92.7	
Sunshine Act Rating																	
Does Not Meet Standard	12	46.2*	10	19.2*	12	46.2	19	35.9	5	17.9	4	7.0	2	7.7	7	12.7	
Meets Standard	14	53.8	42	80.8	14	53.8	34	64.1	23	82.1	53	93.0	24	92.3	48	87.3	

Data Source: School District of Philadelphia, ACE Public Files 2020-21 and 2021-22

* Indicates a statistically significant difference between the two groups at a p-value of 0.05.

Timely Reporting

This metric includes two indicators: Timely Annual Report (the school submitted a complete and appropriately signed and approved annual report by August 1 to PDE for each school year) and Timely Financial Audit (the school submitted its audited financial statements to the Charter School Office by December 31 for each fiscal year). For all four time periods there was no statistically significant difference in ratings for Timely Annual Report and Timely Financial Audit between BLS and OCS.

Table 15. Organizational Compliance Indicator Ratings Among Black-led Charter Schools and Other Charter Schools in Philadelphia, 2017-2021

Organizational Compliance: Timely Reporting	2017-18				2018-19				2019-20				2020-21				
	BLS		OCS		BLS		OCS		BLS		OCS		BLS		OCS		
	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%	
Timely Annual Report Rating																	
Does Not Meet Standard	1	3.9	0	0.0	2	7.7	0	0.0	2	7.1	3	5.3	0	0.0	1	1.8	
Meets Standard	25	96.1	50	100.0	24	92.3	53	100.0	26	92.9	54	94.7	26	100.0	54	98.2	
Timely Financial Audit Rating																	
Does Not Meet Standard	3	11.5	1	2.0	2	7.7	1	1.9	1	3.6	3	5.3	0	0.0	0	0.0	
Meets Standard	23	88.5	49	98.0	24	92.3	52	98.1	27	96.4	54	94.7	26	100.0	55	100.0	

Data Source: School District of Philadelphia, ACE Public Files 2020-21 and 2021-22



Academic Success

This category includes indicators of attendance, post-secondary performance, and proficiency. CSO methodology includes enrollment size as a potential factor when reporting these indicators, but this report did not use that methodology in reporting these indicators.

Attendance

Average attendance percentages are shown in Table 16. Indicators for attendance were measured in high school and K-8 students. Indicators for attendance include attendance and chronic absenteeism.

Attendance is defined as attending 95% or more of days enrolled in school. During the 2020-21 academic year BLS had a significantly lower percentage of schools with students attending 95% or more of days enrolled, compared to OCS (44.0% vs 59.4%; $p < 0.05$).

Chronic Absenteeism

Chronic Absenteeism is defined as attending less than 90% of days enrolled in school. During the 2020-21 academic year BLS had a significantly higher percentage of schools with students attending less than 90% of days enrolled, compared to OCS (38.5% vs 23.7%; $p < 0.05$).

Table 16. Average Attendance Among Black-led Charter Schools and Other Charter Schools in Philadelphia, 2016-2021

Attendance	2016-17		2017-18		2018-19		2019-20		2020-21	
	BLS (n=28)	OCS (n=57)	BLS (n=28)	OCS (n=57)	BLS (n=28)	OCS (n=57)	BLS (n=28)	OCS (n=57)	BLS (n=28)	OCS (n=57)
	Mean %	Mean %	Mean %	Mean %	Mean %	Mean %	Mean %	Mean %	Mean %	Mean %
<i>Attendance</i>										
HS Students	43.8	37.3	38.5	40.2	38.6	40.4	44.6	49.8	44.0*	59.4*
K-8 Students	58.0	53.8	56.4	54.5	55.2	53.6	60.3	60.0	48.4	54.4
<i>Chronic Absenteeism</i>										
HS Students	28.8	34.4	35.0	32.1	33.0	31.9	31.1	26.6	38.5*	23.7*
K-8 Students	17.8	19.5	18.0	18.6	19.5	19.6	17.7	17.4	33.5	28.0

Data Source: School District of Philadelphia, ACE Public Files 2020-21 and 2021-22

* Indicates a statistically significant difference between the two groups at a p-value of 0.05.

Post-Secondary Performance

Average post-secondary performance percentages are shown in Table 17. Post secondary performance includes first fall matriculation, 4-year cohort graduation, and ACT/SAT performance.

Matriculation

There was no statistically significant difference between BLS and OCS regarding first fall matriculation for students. An overall decrease in first fall matriculation was observed in BLS and OCS.

Graduation

Graduation data was only available for years 2016-17 – 2019-20. There was no statistically significant difference in 4-year cohort graduation between BLS and OCS. But, BLS had an overall increase in 4-year cohort graduation percentages.

ACT/ SAT Performance

Data for ACT/ SAT performance was only available for years 2016-17 – 2019-20. There was no statistically significant difference in ACT/ SAT performance meeting the college readiness threshold between BLS and OCS. An overall decrease in college readiness was observed in BLS and OCS.

Table 17. Average Post-secondary Performance Among Black-led Charter Schools and Other Charter Schools in Philadelphia, 2016-2021

Performance	2016-17		2017-18		2018-19		2019-20		2020-21	
	BLS (n=28)	OCS (n=57)	BLS (n=28)	OCS (n=57)	BLS (n=28)	OCS (n=57)	BLS (n=28)	OCS (n=57)	BLS (n=28)	OCS (n=57)
	Mean %	Mean %	Mean %	Mean %	Mean %	Mean %	Mean %	Mean %	Mean %	Mean %
First Fall Matriculation	66.8	61.5	61.0	57.3	56.6	52.3	40.0	46.7	47.1	49.9
4-Year Cohort Graduation	82.8	86.4	82.2	86.0	82.3	85.8	86.1	86.1	--	--
ACT/SAT Performance	5.7	12.0	6.3	12.5	3.3	10.2	3.4	11.5	--	--

Data Source: School District of Philadelphia, ACE Public Files 2020-21 and 2021-22

-- Indicates that no data was available for the academic year.

Proficiency

Proficiency percentages are shown in Table 18. Data for proficiency percentages were only available for years 2016-17 – 2018-19. This indicator was measured for Keystone subjects of Algebra, Biology, and Literature, and the PSSA subjects of ELS, Math, and Science. During the 2016-17 year, BLS had a significantly lower percentage of schools with proficient performance in Keystone Literature, compared to OCS (40.0% vs 60.7%; $p < 0.05$). In the 2017-18 year, BLS had a significantly lower percentage of schools than OCS with proficient performance in all Keystone subjects and PSSA Math (Algebra: 22.0% vs 43.9, Biology: 18.9% vs 38.4%, Literature: 36.4% vs 60.2%, Math: 16.1% vs 23.2%; $p < 0.05$). For the 2018-19 academic year, BLS had a significantly lower percentage of schools than OCS with proficient performance in Keystone Algebra, Keystone Biology, and PSSA Math (Algebra: 21.5% vs 43.3%, Biology: 20.5% vs 39.6%, Math: 16.6% vs 23.5%; $p < 0.05$).

Table 18. Average Proficiency Among Black-led Charter Schools and Other Charter Schools in Philadelphia, 2016-2019

Proficiency	2016-17		2017-18		2018-19	
	BLS (n=28)	OCS (n=57)	BLS (n=28)	OCS (n=57)	BLS (n=28)	OCS (n=57)
	Mean %	Mean %	Mean %	Mean %	Mean %	Mean %
<i>Keystone</i>						
Algebra	29.5	43.9	22.0*	43.9*	21.5*	43.3*
Biology	21.5	38.5	18.9*	38.4*	20.5*	39.6*
Literature	40.0*	60.7*	36.4*	60.2*	48.4	57.1
<i>PSSA</i>						
ELA	38.9	44.0	38.6	45.1	37.2	44.2
Math	16.7	22.7	16.1*	23.2*	16.6*	23.5*
Science	36.5	39.6	38.4	42.5	41.9	49.0

Data Source: School District of Philadelphia, ACE Public Files 2020-21 and 2021-22

-- Indicates that no data was available for the academic year.

* Indicates a statistically significant difference between the two groups at a p-value of 0.05.



AGI (Growth)

Average AGI scores are shown in Table 19. Data was only available for years 2016-17 – 2018-19. Among all students and the lowest performing students, scores were determined for the following PSSA subjects: Algebra, Biology, ELA, Literature, Math, 4th grade Science, and 8th grade Science. Scores were determined for all students and the lowest performing students.

All Students

For the 2016-17 and 2018-19 academic years, BLS had lower median growth scores in PSSA Algebra than OCS (2016-17: -3.6 vs -1.1, 2018-19: -0.9 vs 0.9; $p < 0.05$). During the 2018-19 year BLS had lower median growth scores in PSSA Science for 4th grade students than OCS (-2.9 vs -1.4; $p < 0.05$). For the remaining PSSA subjects (Biology, ELA, Literature, Math, and 8th grade Science), there was no significant difference in median growth scores between BLS and OCS for all years measured.

Lowest Performing Students

Regarding the lowest performing students, during the 2016-17 academic year BLS had lower median growth scores in PSSA Math than OCS (-1.0 vs 0.8; $p < 0.05$). For the 2018-19 year BLS had lower median growth scores in PSSA Science for 4th grade students than OCS (-1.6 vs -0.3; $p < 0.05$). For the remaining PSSA subjects (Algebra, Biology, ELA, Literature, and 8th grade Science), there was no significant difference in median growth scores between the lowest performing students in BLS and OCS for all years measured.

Table 19. Median Growth (AGI) Scores Among Black-led Charter Schools and Other Charter Schools in Philadelphia, 2016-2019

AGI Scores	2016-17		2017-18		2018-19	
	BLS (n=28)	OCS (n=57)	BLS (n=28)	OCS (n=57)	BLS (n=28)	OCS (n=57)
	Median	Median	Median	Median	Median	Median
PSSA Algebra	-3.6*	-1.1*	-0.9*	0.9*	0.0	1.0
PSSA Biology	-2.0	1.2	-0.8	1.1	-0.6	1.7
PSSA ELA	1.0	1.5	1.1	1.2	1.0	1.3
PSSA Literature	-1.6	1.0	-1.2	1.8	2.0	2.3
PSSA Math	0.2	2.4	1.5	2.2	1.9	1.2
PSSA Science (4th Grade)	-2.1	-2.1	-3.7	-3.0	-2.9*	-1.4*
PSSA Science (8th Grade)	-0.5	0.2	0.0	-0.5	0.4	-0.7
<i>Lowest Performing Students</i>						
PSSA Algebra	1.5	1.5	0.9	1.4	1.7	1.6
PSSA Biology	0.8	1.7	1.5	1.8	2.0	2.0
PSSA ELA	0.7	0.4	1.2	0.7	0.7	0.5
PSSA Literature	-0.9	0.3	-1.6	0.3	-0.3	-0.1
PSSA Math	-1.0*	0.8*	-0.2	0.9	1.4	1.0
PSSA Science (4th Grade)	-0.3	-0.1	-1.4	-0.8	-1.6*	-0.3*
PSSA Science (8th Grade)	1.2	1.3	0.5	0.6	0.5	0.2

Data Source: School District of Philadelphia, ACE Public Files 2020-21 and 2021-22

* Indicates a statistically significant difference between the two groups at a p-value of 0.05.



Financial Health and Sustainability

Financial health and sustainability metrics (Table 20) for each school were rated as two (2) for meeting, one (1) for approaching, and zero (0) for not meeting the standard. For analytical reasons provided in the methods, the approaching and meeting the standard rating categories were combined. Indicators in this category were measured for years 2016-17 – 2020-21.

Audit

Audit Findings is defined as no material audit findings, deficiencies or weaknesses identified in the annual audit for any year of the charter term. During the 2018-19 academic year BLS had a significantly higher percentage of schools not meeting the standard for this indicator, compared to OCS (21.4% vs 3.6%; $p < 0.05$).

Debt Delinquency and Default


This indicator is defined as the school is meeting its debt obligations and covenants. For all five years measured, there was no significant difference between BLS and OCS.

PSERS

PSERS means the school makes timely and full payments to the Public School Employees' Retirement System. For all five years measured, all BLS approached or met the standard.

Current Ratio

This indicator is defined as the ratio of short-term assets to short-term liabilities. During the 2017-18 academic year BLS had a significantly higher percentage of schools not meeting the standard for this indicator, compared to OCS (39.3% vs 13.5%; $p < 0.05$).



Cash on Hand

This indicator is measured as the number of days a school could operate without receiving additional money. For the years 2016-17 and 2019-20 BLS had a significantly higher percentage of schools not meeting the standard for this indicator, compared to OCS (2016-17: 50.0% vs 17.3%, 2019-20: 17.9% vs 3.5%; $p < 0.05$).

Debt Ratio

This indicator is determined by the percentage of a school's total assets that are owed to other individuals or businesses. During the 2019-20 academic year BLS had a significantly higher percentage of schools not meeting the standard for this indicator, compared to OCS (28.6% vs 5.3%; $p < 0.05$).

Debt Service Coverage Ratio

Debt Service Coverage is defined by whether a school can meet its debt obligations in the coming year. For the years 2017-18 and 2019-20 BLS had a significantly higher percentage of schools not meeting the standard for this indicator, compared to OCS (2016-17: 30.0% vs 3.2%, 2019-20: 25.0% vs 0.0%; $p < 0.05$).

Net Position

This indicator measures how much a school is worth as a percentage of its total annual revenue. For all five years measured, there was no significant difference between BLS and OCS.

Non-Restricted Fund Balance

This indicator is determined by how much a school is worth as a percentage of its total annual revenue after removing certain items such as property, equipment, and long-term debt. During the 2016-17 and 2017-18 academic years BLS had a significantly higher percentage of schools not meeting the standard for this indicator, compared to OCS (2016-17: 50.0% vs 21.6%, 2017-18: 42.9% vs 13.7%; $p < 0.05$).

Total Margin

Total Margin is the percentage of a school's total annual revenue not spent. For all five years measured, there was no significant difference between BLS and OCS.

Summary Ratings	2016-17				2017-18				2018-19				2019-20				2020-21			
	BLS		OCS		BLS		OCS		BLS		OCS		BLS		OCS		BLS		OCS	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Audit Rating																				
Does Not Meet Standard	4	14.3	5	9.6	3	10.7	6	11.5	6	21.4*	2	3.6*	9	32.1	9	15.8	2	7.7	1	1.8
Approaches or Meets Standard	24	85.7	47	90.4	25	89.3	46	88.5	22	78.6	53	96.4	19	67.9	48	84.2	24	92.3	54	98.2
Debt Delinquency & Default Rating																				
Does Not Meet Standard	2	7.1	6	11.5	2	7.1	6	11.5	2	7.1	3	5.5	2	7.1	1	1.8	0	0.0	1	1.8
Approaches or Meets Standard	26	92.9	46	88.5	26	92.9	46	88.5	26	92.9	52	94.5	26	92.9	56	98.2	26	100.0	54	98.2
PSERS Rating																				
Does Not Meet Standard	0	0.0	2	4.3	2	8.0	0	0.0	0	0.0	1	2.1	0	0.0	1	2.1	0	0.0	0	0.0
Approaches or Meets Standard	24	100.0	45	95.7	23	92.0	47	100.0	25	100.0	47	97.9	25	100.0	47	97.9	23	100.0	45	100.0
Current Ratio Rating																				
Does Not Meet Standard	12	42.9	12	23.1	11	39.3*	7	13.5*	7	25.0	7	12.7	6	21.4	3	5.3	1	3.9	0	0.0
Approaches or Meets Standard	16	57.1	40	76.9	17	60.7	45	86.5	21	75.0	48	87.3	22	78.6	54	94.7	25	96.1	55	100.0
Days Cash on Hand Rating																				
Does Not Meet Standard	14	50.0*	9	17.3*	10	35.7	8	15.4	5	17.9	4	7.3	5	17.9*	2	3.5*	1	3.9	0	0.0
Approaches or Meets Standard	14	50.0	43	82.7	18	64.3	44	84.6	23	82.1	51	92.7	23	82.1	55	96.5	25	96.1	55	100.0

	BLS		OCS		BLS		OCS		BLS		OCS		BLS		OCS		BLS		OCS		
	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%	
Debt Ratio Rating																					
Does Not Meet Standard	11	39.3	9	17.3	9	32.1	7	13.5	5	17.9	7	12.7	8	28.6*	3	5.3*	3	11.5	1	1.8	
Approaches or Meets Standard	17	60.7	43	82.7	19	67.9	45	86.5	23	82.1	48	87.3	20	71.4	54	94.7	23	88.5	54	98.2	
Debt Service Ratio Rating																					
Does Not Meet Standard	4	21.1	8	24.2	6	30.0*	1	3.2*	3	15.8	5	13.5	5	25.0*	0	0.0*	0	0.0	0	0.0	
Approaches or Meets Standard	15	78.9	25	75.8	14	70.0	30	96.8	16	84.2	32	86.5	15	75.0	39	100.0	20	100.0	37	100.0	
Net Position Rating																					
Does Not Meet Standard	10	35.7	9	17.3	6	21.4	5	9.6	1	3.6	6	10.9	2	7.1	2	3.5	0	0.0	0	0.0	
Approaches or Meets Standard	18	64.3	43	82.7	22	78.6	47	90.4	27	96.4	49	89.1	26	92.9	55	96.5	26	100.0	55	100.0	
Non-restricted Funds Rating																					
Does Not Meet Standard	14	50.0*	11	21.6*	12	42.9*	7	13.7*	6	21.4	5	9.3	5	17.9	3	5.4	2	7.7	1	1.8	
Approaches or Meets Standard	14	50.0	40	78.4	16	57.1	44	86.3	22	78.6	49	90.7	23	82.1	53	94.6	24	92.3	54	98.2	
Total Margin Rating																					
Does Not Meet Standard	2	7.1	0	0.0	0	0.0	0	0.0	0	0.0	2	3.6	0	0.0	0	0.0	0	0.0	0	0.0	
Approaches or Meets Standard	26	92.9	52	100.0	28	100.0	52	100.0	28	100.0	53	96.4	28	100.0	57	100.0	26	100.0	55	100.0	

Data Source: School District of Philadelphia, ACE Public Files 2020-21 and 2021-22
 -- Indicates that no data was available for the academic year.
 * Indicates a statistically significant difference between the two groups at a p-value of 0.05.

Discussion


While BLS are more likely to be rated as not meeting standards across the three evaluation domains (Academic Success, Organizational Compliance and Viability, and Financial Health and Sustainability), most of these differences are not statistically significant. The findings of this exploratory analysis suggest that BLS, as an aggregate, are not far in performance compared to OCS, but distinct in their focus on Black students.

BLS differ from OCS in that they are not only Black-led but Black-serving. These schools have significantly higher Black student populations. On average, the Black student population at BLS is 30 points higher than Black student enrollment at OCS across the six academic years (2016-17 – 2021-22) measured. These demographic differences are important as school closures disproportionately displace Black and poor students. A national analysis of charter school closures found that as the proportion of Black students in a charter school increases, the likelihood of closure increases.⁴

BLS are also smaller in size. The smaller enrollment size may be due to limited capacity including financial and human resources to enroll more students. Not surprisingly, in our analysis, Financial Health and Sustainability is the domain where BLS rated lower on nearly all metrics (6 out of 10). While higher percentages of Does Not Meet ratings are observed for BLS across most of the Financial Health and Sustainability metrics, there is a clear pattern of continuing improvement in this domain for BLS. For example, whereas 50% of BLS did not meet the standard for Cash on Hand in academic year 2016-17, 96% met the standard for the 2020-21 academic year. Similar patterns are noted for Days Cash on Hand, Debt Ratio, Debt Service Ratio, Debt Position and Non-restricted Funds.

It is important to note however, that budget and resource disparities between the BLS schools and the OCS schools are unknown and unaccounted for in ACE data. Historically and today, Black-led organizations and institutions are chronically underfunded and they continue to face

⁴ Paino, M et al. 2016. "The Closing Door: The Effect of Race on Charter School Closures." *Sociological Perspectives*, 60(4): (<https://journals.sagepub.com/doi/10.1177/0731121416674948#body-ref-bibr71-0731121416674948>).




difficulty accessing capital needed to build organizational infrastructure that support sustainability and success. Budgets, particularly budgets that are sustained at an appropriate funding level over time, directly impact a school's ability to attract and retain quality teachers, student access to textbooks, computers and technology in the schools, student proficiency and learning gains, attendance and graduation rates.

While BLS had lower percentages of schools than OCS meeting the standard across Organizational Compliance and Viability metrics, most of these differences were not statistically significant. There were 9 out of 25 indicators for Organizational Compliance and Viability where significant differences were observed in a given year for the following metrics: Board Accessibility, Certified Teachers, Code Due Process, EL Timely Evaluation, Statements of Financial Interest, Food Safety, Health Services Policy, Water Quality, and Sunshine Act. However there is no consistent metric where statistically significant differences in BLS or OCS not meeting the standard are observed. Across the majority of Organizational Compliance and Viability categories, in terms of percentages, most BLS and OCS are meeting Organizational Compliance and Viability standards.

Across the five academic years (2016-17 through 2020-21) for which data are available, there are no statistically significant differences in attendance and absenteeism between BLS and OCS except for academic year 2020-21. In 2020-21, BLS experienced statistically significant lower attendance and higher chronic absenteeism percentages than OCS. This finding is consistent with data reported nationally, where schools with higher Black student populations experienced higher absenteeism rates due to the COVID-19 pandemic.

Post-secondary performance (first fall matriculation, 4-year cohort graduation, ACT/SAT performance) did not differ significantly between BLS and OCS. BLS had statistically significant lower percentages of schools than OCS performing proficiently in all Keystone subjects (Algebra, Biology, Literature) and PSSA Math.

Overall BLS show improvements in rating scores across the domain areas. OCS performance across the domains has been stable. This report also shows areas in which BLS performance can be improved, such as Academic Success. Other factors such as funding and resource equity between BLS and OCS and the unique challenges facing schools with high populations of Black



students should also be considered when assessing differences between BLS and OCS in future discussions and analyses.

Limitations and Conclusions


When interpreting these findings, it is important to note some key limitations and context. First, the analysis only examines data in the public files provided by CSO, and not the underlying data (e.g., charter school compliance reports and materials reviewed by CSO) used to produce the ratings. As a result, the ratings are taken at face value as it is not possible to reproduce the ratings or determine validity or fairness of the ratings given the scope and time available for this analysis.

A second limitation of the data is that the average length of time students have attended a given charter school are unknown. For example, is the 6th grade middle school cohort primarily composed of students who have already been with that charter school since kindergarten or those for whom this is their first year at a charter school?

Third, student and parent satisfaction are also unaccounted for in these data and feedback from these essential stakeholder groups should be collected and considered when determining school reductions and closures. For example, it is unknown if students and parents are more satisfied with their current charter school or perceive it to provide better education opportunities than their assigned neighborhood school.

Related to the limitation of student and parent satisfaction data, are questions about the location of the schools, such as neighborhood poverty levels, average distance and time students must travel, if the school provides transportation, or if the school is in a safe neighborhood or on a safe transit route.

A fifth limitation is that the time period covered here includes two school years, 2019-2020 and 2020-2021, that were greatly interrupted by the COVID-19 pandemic and resulted in in-person school closures around the world. Research shows that across the nation, Black students generally faced more challenges with virtual schooling than their white peers. Black



parents/adults were also more likely to work outside of the home during this period, to become sick or die from COVID-19.⁵ It is not possible to fully account for COVID-19's impact in the data.

Public administration is guided by three pillars: economy, efficiency, and effectiveness.⁶ Accountability schemes including those that guide the evaluation of charter schools operate with these pillars in mind and rely on the assumption of objectivity to build trust in governance and accountability processes. Missing often, however, is the contextualization of history and prioritizing of racial equity in the administration of these processes. The National Academy of Public Administration has called on public administrators to include social equity as a key pillar to “address issues of fairness, justice, and equity within a variety of public contexts.”⁷

Nationally, schools with a larger percentage of Black students are more likely to experience sanctions including school closures.⁸ Recent national conversations have encouraged a move from using assessment data as a way to punish schools.⁹ Evaluation frameworks, while useful for establishing common standards for goal setting and assessing performance, may reinforce systemic inequities if equity is not included as part of evaluation considerations. An emerging best practice is to use educational outcome data to identify and understand where systemic inequities persist and where additional resources including technical assistance may be needed. School performance data should be contextualized to enable decision-makers to fully consider

⁵ Alfonseca, K. 2021. “Black, Hispanic students disproportionately face challenges as schools reopen amid COVID-19.” <https://abcnews.go.com/US/black-hispanic-students-disproportionately-face-challenges-schools-reopen/story?id=79812682>

⁶ Norman-Major, K. 2011. “Balancing the Four Es; or Can We Achieve Equity for Social Equity in Public Administration?” *Journal of Public Affairs Education*, 17(2):

<https://www.tandfonline.com/doi/abs/10.1080/15236803.2011.12001640?src=recsys>

⁷ National Academy of Public Administration. “Foster Social Equity.”

<https://napawash.org/grand-challenges/foster-social-equity>


⁸ Paino, M et al. 2016. “The Closing Door: The Effect of Race on Charter School Closures.” *Sociological Perspectives*, 60(4): (<https://journals.sagepub.com/doi/10.1177/0731121416674948#body-ref-bibr71-0731121416674948>).

; National Center for Research on Education Access and School Choice. 2022. “Extreme Measures: POLICY BRIEF A National Descriptive Analysis of Closure and Restructuring of Traditional Public, Charter, and Private Schools.”

<https://reachcentered.org/uploads/policybrief/REACH-National-Closure-Restructuring-2022-05-24.pdf>

⁹ Stanford, L. 2023. “Education Secretary: Standardized Tests Should No Longer Be a ‘Hammer’.”

<https://www.edweek.org/policy-politics/education-secretary-standardized-tests-should-no-longer-be-a-hammer/2023/01>



how systematic racism and the accumulated disadvantages experienced among Black students, families and schools increase the likelihood that Black-led schools and schools composed of predominantly Black students will face closure. Applying an equity lens to charter school performance would include consideration of how small shifts in operational, personnel and other factors may increase the likelihood that schools with less financial resources will not meet organizational compliance and financial health standards. Additional avenues for addressing issues of fairness, justice, and equity in the charter school evaluation process include development of an explicit anti-racist commitment from the CSO, increasing community voice and participation in developing evaluation standards and processes, and collection of data that center the lived experiences of students and parents impacted by renewal decisions.

Appendix: Charter Schools List

School Name
Ad Prima Charter School *
Alliance for Progress Charter School *
Antonia Pantoja Charter School
Belmont Elementary Charter School
Boys Latin of Philadelphia Charter School *
Christopher Columbus Charter School
Community Academy of Philadelphia Charter School
Deep Roots Charter School
Esperanza Academy Charter School
Eugenio Maria de Hostos Charter School
First Philadelphia Preparatory Charter School
Folk Arts Cultural Treasures Charter School
Franklin Towne Charter Elementary School
Franklin Towne Charter High School
Frederick Douglass Mastery Charter School
Freire Charter School
Global Leadership Academy Charter School *
Global Leadership Academy Charter School Southwest at Huey *
Green Woods Charter School
Harambee Institute of Science and Technology Charter School *
Hardy Williams Academy Charter School
Imhotep Institute Charter High School *
Independence Charter School *
Independence Charter School West

Inquiry Charter School
John B Stetson Charter School
John Wister Mastery Charter School
Keystone Academy Charter School *
KIPP DuBois Charter School *
KIPP North Philadelphia Charter School
KIPP Philadelphia Charter School*
KIPP West Philadelphia Charter School
KIPP West Philadelphia Preparatory Charter School *
Laboratory Charter School of Communication and Languages *
Lindley Academy Charter School at Birney
Mariana Bracetti Academy Charter School
Maritime Academy Charter School
MaST Community Charter School III
Mastery Charter High School
Mastery Charter School - Pickett Campus
Mastery Charter School - Shoemaker Campus
Mastery Charter School - Thomas Campus
Mastery Charter School – Cleveland Elementary
Mastery Charter School – Clymer Elementary
Mastery Charter School Harrity Elementary
Mastery Charter School Mann Elementary
Mastery Charter School Pastorius - Richardson Elementary
Mastery Charter School Simon Gratz Campus
Mastery Charter School Smedley Elementary
Mastery Prep Elementary Charter School
Mathematics Sciences and Technology Community Charter School
Mathematics Sciences and Technology Community Charter School II

Mathematics, Civics and Sciences Charter School *
Memphis Street Academy Charter School at J.P. Jones
Multicultural Academy Charter School
New Foundations Charter School
Northwood Academy Charter School
Olney Charter High School
Pan American Academy Charter School
People for People Charter School *
Philadelphia Academy Charter School
Philadelphia Charter School for Arts and Sciences at H. R. Edmunds
Philadelphia Electrical & Technology Charter High School
Philadelphia Hebrew Public Charter School
Philadelphia Montessori Charter School
Philadelphia Performing Arts Charter School - A String Theory Charter School
Richard Allen Preparatory Charter School *
Russell Byers Charter School
Sankofa Freedom Academy Charter School *
Southwest Leadership Academy Charter School *
Tacony Academy Charter School
TECH Freire Charter School *
The Jacqueline Y. Kelley Discovery Charter School *
The Preparatory Charter School of Math, Science, Tech & Careers
Universal Alcorn Charter *
Universal Audenried Promise Neighborhood Partnership Charter School *
Universal Bluford Charter School *
Universal Creighton Charter School *
Universal Daroff Charter School *
Universal Institute Charter School *

Universal Vare Promise Neighborhood Partnership Charter School *
West Oak Lane Charter School *
Wissahickon Charter School
Young Scholars Charter School
YouthBuild Philadelphia Charter School
* Indicates the school is a BLS. The following Black-led schools did not factor into our analysis as we did not have the requisite data for the period relevant to this analysis (2016-2021) because either they were closed or their data did not exist in the public files:
Eastern Academy, World Communications, Delaware Valley Academy, Imani, Khepera, New Media, Wakisha, Walter D. Palmer, and West Philadelphia Achievement.