January 30, 2012

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Mr. Danny Cortez
Esperanza Cyber Charter School
dcortes@esperanza.us

DELIVERED VIA EMAIL

Mr. Cortez:

Thank you for your interest in opening a cyber charter school in Pennsylvania. After reviewing the **Esperanza Cyber Charter School** application, it is the decision of the Pennsylvania Department of Education to deny your application.

Your application provided several unique components that will provide students with an interesting new opportunity. However, the reviewers have noted several deficiencies in the pages that follow.

When PDE denies a cyber charter school applicant a charter, the applicant may revise and resubmit the denied application or may appeal the denial to the Charter Appeal Board. A cyber charter school applicant may only revise and resubmit a denied application to PDE one time. Any revised and resubmitted application must be provided to PDE within at least 120 days prior to the originally proposed opening date of the cyber charter school.

If you have any questions, please contact Marlene Kanuck at (717) 783-9294 or at mkanuck@pa.gov.

Sincerely,
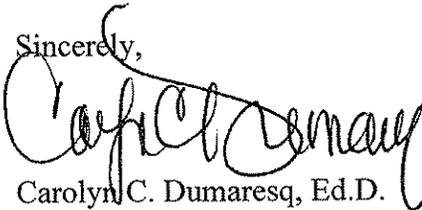
Carolyn C. Dumaresq, Ed.D.

The Proposed Esperanza Cyber Charter School
2011 Cyber Charter School Application

Background

Amendments to the Charter School Law ("CSL"), 24 P.S. §§17-1701-A – 17-1751-A,

that became effective July 1, 2002, include new Subchapter (c), which sets forth new provisions

for the establishment and oversight of cyber charter schools. *See,* Act of June 29, 2002, No. 88,

§14, adding 24 P.S. §§17-1741-A to 17-1751-A ("Act 88"). Pursuant to Act 88, the Department

of Education (the "Department") has the authority and responsibility to receive, review and act

on applications for the creation of a cyber charter school. Act 88 requires that cyber charter

school applicants submit applications to the Department by October 1 of the school year

preceding the school year in which the cyber charter school proposes to commence operation.

After submission of an application, the Department is required to hold at least one public hearing

and grant or deny the application within 120 days of its receipt.

- On October 3, 2011, the proposed Esperanza Cyber Charter School ("ECCS") submitted an application to operate as a cyber charter school.

- The Department provided 30 days notice of a public hearing that was held on November 29, 2011.

- At the hearing, Esperanza Cyber Charter School presented the Department with information about its application. Department personnel who had reviewed the application also posed questions to the Esperanza Cyber Charter School representatives.

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The Application

On October 3, 2011, the proposed Esperanza Cyber Charter School (ECCS) submitted to the Department an application to operate a cyber charter school. The Department is to evaluate the application based on the following criteria:

- (i) The demonstrated, sustainable support for the cyber charter school plan by teachers, parents or guardians and students.
- (ii) The capability of the cyber charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students under the charter.
- (iii) The extent to which the programs outlined in the application will enable students to meet the academic standards under 22 Pa. Code Ch. 4 (relating to academic standards and assessment) or subsequent regulations promulgated to replace 22 Pa. Code Ch. 4.
- (iv) The extent to which the application meets the requirements of section 1747-A.
- (v) The extent to which the cyber charter school may serve as a model for other public schools.

The Proposed ECCS School will:

- Enroll students in grades K-12
- Be headquartered in Philadelphia County, Pennsylvania
- The maximum projected student enrollment for year one is 600 students, increasing to 1,245 for year five

Decision of the Pennsylvania Department of Education

Based on a thorough review of the written application as well as questions and responses recorded at the November 29, 2011 public hearing, the Pennsylvania Department of Education is denying the application of the ECCS.

Members of the review committee feel strongly that the framework for the ECCS provides several unique components that we hope will serve as a model to other cyber charters and traditional schools. Specifically, the plan to have students explore career directions that coincide with their interests and strengths beginning at the earliest ages, and begin "majors" in particular career areas starting with the middle grades and requiring proficiency in English, mathematics, Spanish and technology will provide students with a powerful opportunity that will set them apart from their peers in the post secondary community. Additionally, ECCS's plan to require for graduation a completion of a detailed five- year post-graduation plan for working and learning provides support to graduates in the areas of college and work preparation.

However, the following deficiencies must be sufficiently addressed before a charter could be approved:

- The curriculum must be complete and aligned to the Pennsylvania State Academic Standards and noted ELL issues must be addressed.

- The financial information must be clarified in the following areas:

   o Two budget formats were submitted, with two different totals.
   o Projected budgets understate PSERS contribution rates.
   o The budget does not include cost of leasing planned satellite locations.
   o The budget includes an inaccurate footnote.
   o The application does not discuss how start-up costs will be addressed.

- Evidence of insurability must be provided.

- ECCS must provide complete Professional Education and Teacher Induction plans

- PSSA assessment proficiency must be tied to PSSA scores.

- Technology for all students across the state must be equitable. Acceptable Use Policies must be up-to-date.

- ECCS must provide supporting documentation to show community support for their cyber charter education plan.

- ECCS must demonstrate organizational independence.

- A copy of the signed Memorandum of Understanding with Esperanza, Inc., the entity from which ECCS will secure their facility, must be provided.

Detailed Response

Proof of curriculum and assessment alignment must be submitted to the Department to ensure that requirements of Chapter 4 are met:

In review of the curriculum, ECCS showed no evidence in any of the subject areas of a complete curriculum framework that clearly describes content. They did not include curriculum maps delineating course to be offered and how it meets the requirements of 22 Pa. Code Ch4. (relating to academic Standards and assessment) or subsequent regulations promulgated to replace 22 Pa. Code Ch4. ECCS did not articulate how planned instruction aligned with academic standards shall be provided at all grade levels. When asked the question if the ECCS curriculum is ready for the first year the answer was no. What was provided in the application was the curriculum guide for the corresponding brick and mortar building. ECCS did not provide information of what provider will be providing instruction and curriculum for the cyber school. If ECCS using multiple online providers there is no insurance that they will meet the curriculum needs as per chapter 4 regulations.

The following ELL issues must be addressed:

According to 22 PA Code § 4.26 ESOL, " Every school district shall provide a program for each student whose dominant language is not English for the purpose of facilitating the student's achievement of English proficiency and the academic standards under § 4.12 (relating to academic standards). Programs under this section shall include appropriate bilingual-bicultural or English as a second language (ESL) instruction." The Basic Education Circular, *Educating Students with Limited English Proficiency (LEP) and English Language Learners (ELL)* 22 Pa. Code § 4.26 states that each LEA must have a written Language Instructional Program that addresses key components, including a process for identification, placement, exit, and post-exit monitoring; instructional model used; curriculum aligned to PA standards; and administration of annual proficiency and academic assessments.

ECCS's application specified planned instruction for English language learners and provided evidence of an instructional model based on sound educational theory that is regularly evaluated using ACCESS and PSSA data. It described English language acquisition classes that deliver daily instruction based on proficiency level, using curriculum aligned to PA ELPS and PA academic standards in order to facilitate students' achievement of English proficiency. However, it failed to provide an ESL curriculum aligned to PA ELPS and academic standards. While the application did account for the number of courses offered, it did not specify the online time required for ESL instruction.

The following financial issues must be addressed:

Two budget formats were submitted, with two different totals. There appears to be a $66,022 difference between the FY2012-13 budget form on page 1 of Appendix G and the "Budget and Narrative" form on p. 6 of Appendix G. If one or both of these forms includes an error, a corrected version(s) should be submitted.

Projected budgets understate PSERS contribution rates. The PSERS employer contribution rate is assumed to be flat at 8.65% in all years. That figure is the 2011-2012 PSERs rate, however PSERs has published projected contribution rates of 12.19% in 2012-13 (Year 1), increasing to 24.50% by 2016-17 (Year 5). School representatives conceded that the budget should be updated to include current published PSERS contribution rates.

The budget does not include cost of leasing planned satellite locations. ECCS's application mentions other site locations outside of Philadelphia, specifically in Reading, York, and Allentown. However, the budget does not reflect any cost for classrooms or leased satellite locations in these areas, despite the fact that enrollment projections show two-thirds of students coming from outside of Philadelphia and that eight satellite classrooms are projected to be used in the school's first year. School representatives stated that they have not yet identified satellite locations, and that they are working with partners to identify whether there are options for existing facilities that can be used. If they are not able to find "no-cost" options in these areas, they would either have to forgo adding satellite locations, or revise the budget to include the cost of leasing classroom locations outside of Philadelphia.

The budget includes an inaccurate footnote. Page 1 of Appendix G includes a footnote that states: "The budgetary reserve is enough even if there was a 15% drop in enrollment." However, the budget does not show a reserve, fund balance, or contingency amount until 2015-16. School representatives stated that this footnote is inaccurate and that the budget is correct. No contingency or reserve is expected until the 2015-16 school year.

The application does not discuss how start-up costs will be addressed. A school representative stated that a lot of the "underwriting activity" for the cyber charter school is being "borne by the parent company," Esperanza Inc., and that other than that there are no start-up funds projected. It is unclear whether the cyber charter will be required to pay back any start-up costs or whether Esperanza Inc. will continue to bear all costs of start-up activity until the first school district revenue is received.

The ECCS must provide evidence of insurability:

The cyber charter school application requires that the applicant provide evidence of insurability in specifically identified, such as health and general liability, school operation, Directors' and Officers' liability coverage, etc. ECCS stated that it would provide evidence of insurance in all areas upon approval of its application. This is not in compliance with the application requirements, which require evidence that the applicant has obtained preliminary approval for insurance in these areas.

Professional Education or Teacher Induction plans in the application were limited:

The Professional Education Plan was limited to a description of orientation to student information systems and the Standards Aligned System (SAS), professional development day topics, and reinforcement of staff meetings. There was no Teacher Induction Plan in the application.

The ECCS must provide a detailed Professional Education Plan that designates, or provides for the designation of, a professional education planning committee consisting of parents, administration representation, teachers and educational specialists designated by their peers, community representation and local business representation. The plan did not explain how the school will assess the professional education needs however the school stated in their interview that they would develop a needs assessment by having a broad base of stakeholders that would supply the process with information. The school also stated that there would be a rigorous process for feedback to make sure they were meeting the needs of all their families. In order to meet the professional development action plan, the school's activities must comply with content area, teaching practices, and meeting the needs of diverse learners. The plan must also explain how the school's professional education program will be annually evaluated.

The ECCS stated in the interview hearing that they are aware of the Teacher Induction guidelines however they must develop a Teacher Induction Plan that includes a teacher induction committee (Induction Council) consisting of administration representation, as well as teachers or educational specialist designated by their peers. This plan must provide goals and competencies and an assessment process. The plan must explain how a school induction team will be set and how mentors will be designated and matched with the new teachers in a sustainable mentor-inductee relationship. The plan must include the Code of Professional Practice and Conduct as stated in 22 Pa. Code 235 as one of many activities. The school stated in their interview how they have been successful being on the front end of their training practices related to the Code of Professional Standards. The plan must also provide an explanation of how the induction program will be monitored and evaluated along with how records relating to program participation and completion will be maintained.

Assessment must assess graduation requirements correctly:

ECCS stated claim that 11th grade students below proficiency were brought to grade level before graduating in the existing Esperanza school as a model for the cyber charter is troubling in that the reference assessment (Study Island) may not have a high correlation to the PSSA standards. Furthermore, statistics weren't provided at the time of the hearing about how many 12th graders taking the PSSA re-test become proficient and then of those who remain below proficiency levels become proficient by the time they graduate. A reference was made in the hearing that after the PSSA re-test, the percentage still not proficient was in single digits (pg. 61, Ln. 10, 11). Again, even if all students became "proficient", as measured by Study Island that may not mean the same thing as "proficient" by PSSA standards.

It is the intent of ECCS to employ the Access for ELLs assessment (ACCESS) to gauge proficiency in the English Language. The purpose of ACCESS is to assess the level at which an English language learner is able us access the English language and not assess proficiency in the English language.

ECCS must address Broadband/Connectivity:

Having broadband connectivity to the home is essential for every student to have the same level and quality of access to all instructional materials and collaboration tools within a cyber-school

environment. But some students in the state may live in areas not serviced with broadband to the home. Regardless of the connectivity available, no student's cyber school education should be limited based on where they live.

To this end, ECCS should establish a minimum connectivity standard which is required to access all the virtual tools to be used by the students. For those students not living in a home currently serviced by broadband, ECCS should create specific policies that outline how the school will help the family work with local telecommunication providers to explore broadband options that may be available. In cases where no broadband options are available to the student's home, additional policies should be created that outline how ECCS will work families to establish alternatives to accessing the instructional materials/collaboration tools. Perhaps in such cases an individualized access plan is created that addresses alternative modes of the delivery of material, partnerships with local community resources that may have access to broadband, etc.

Additions to the Acceptable Use Policy (AUP):

An Acceptable Use Policy (AUP) / Internet Safety Policy have been developed to address the need for compliance with the Federal Children's Internet Protection Act (CIPA) and PA Child Internet Protection Act (Act 197 of 2004). ECCS's AUP addresses the terms and conditions for appropriate/safe network and equipment use. In addition anti-bullying policies were provided that can be extended to address cyber bullying. Both students and parents are required to sign an acknowledgement of agreement for acceptable use.

The AUP must include provisions that address the new updates to the Federal CIPA Act. At a minimum, the updates to the law will require that the schools' Internet Safety Policy include provisions to educate minors about appropriate online behavior, including interacting with other individuals on social networking websites/chat rooms and cyber bullying awareness/response. The AUP must include what specific educational experiences students will be required to complete relative to appropriate online behavior.

Additional information is needed on delivery of educational programs:

According to the application ECCS believes that "traditional cyber education which has little or no time with school staff will not provide the necessary structure to move our students ahead. Through a combination of online learning and in-person teaching, tutoring, counseling, and peer interactions, the school will ensure that each student's educational programing maximizes their opportunities for learning" (page 10). In addition the application describes how teachers will teach students directly using online lessons in which students will participate using online whiteboards and interactive microphones (synchronous technology). Finally the application did mention asynchronous options such as the archiving of lessons and accessing of materials (page 65). Based on this more clarification is required as to what technologies/systems will be used to deliver these synchronous and asynchronous educational opportunities. In addition more clarification is required as to how ECCS plans to "blend" face-to-face teaching with online learning. Will all students be required to participate? What criteria are used to establish which experiences are face-to-face versus online?

ECCS must demonstrate sustainable support:

One of the criteria to be used by the Department to evaluate a cyber charter school application is the "demonstrated, sustainable support for the cyber charter school plan by teachers, parents or guardians and students." 24 P.S. § 17-1745(f) (1) (i). "[S]ustainable support means support sufficient to sustain and maintain the proposed charter school as an on-going entity." *In Re: Ronald H. Brown Charter School,* CAB No. 1999-1, p. 18.

ECCS provided 8 letters of support from businesses and universities. However, it did not provide any letters of support from parents, students or teachers. In its application, ECCS stated that it had a petition with over 500 signatures of parents and students asking for elementary and middle school grades to be provided by Esperanza. But this alleged petition was not provided with the application and it does not indicate that the support was for the proposed cyber charter school plan. Although sustainable support can be provided in the aggregate and does not require a showing of support from each particular group, 8 letters of support from only businesses and universities does not show support sufficient to sustain and maintain the proposed cyber charter school as an on-going entity.

ECCS must demonstrate organizational independence:

In its Bylaws, ECCS states that the sole member of the nonprofit corporation is Esperanza, Inc. This is in contradiction to the Articles of Incorporation, which state that there are no members of the nonprofit corporation. In addition, the nonprofit cyber charter school cannot be the subsidiary of, or function under the control of, another corporation, which is apparently what ECCS intends to do, as evidenced by information in the Bylaws and the application.

The Board of Trustees and the Chairperson are to be appointed by Esperanza, Inc. Esperanza, Inc. may declare vacant the office of a Trustee and may remove one who fails to perform his or her duties. Officers can be removed by Esperanza, Inc. and vacancies are filled by Esperanza, Inc. In addition, ECCS states in its application that after a charter is granted Trustees will be chosen from the founders. Many of the founders are on the board of directors of Esperanza, Inc., or are otherwise connected to Esperanza, Inc.

Checks are to be signed by two people: the President of Esperanza, Inc.; the COO of Esperanza, Inc.; a designee of the President of Esperanza, Inc.; and the CAO or Treasurer of ECCS. In addition, any amendments to the Bylaws are adopted subject to written consent of Esperanza, Inc.

The Bylaws state that upon dissolution any assets remaining after payment of all outstanding obligations will be disposed of exclusively for the purposes of the Corporation or to such corporation organized as a 501(c) (3) corporation as the Board determines. This is not in compliance with provisions of the Charter School Law and is also contradictory to the Articles of Incorporation.

In its application, ECCS states that it will seek a management contract with Esperanza, Inc. for the following areas: human resources, public relations, maintenance, legal, capital projects and

facility development, finance and accounting, development, fundraising and marketing, government relations and risk management. In another part of the application, ECCS states that upon approval of the charter application, it will enter into a managing contract with Esperanza, Inc. The Commonwealth Court has held that a charter school applicant must provide a copy of a finalized management agreement in the application so that the authorizer can determine whether the Board of Trustees will have ultimate control of the charter school.

All of the above clearly evidences that ECCS is not going to be an independent entity; but is going to be a subsidiary of, or function under the control of, Esperanza, Inc. This is not permissible. In addition, ECCS has not complied with case law that requires providing a finalized management agreement with the application.

Miscellaneous:

In its Internet Safety Policy, ECCS states that the CEO has the responsibility, etc. to protect the School District of Philadelphia's computer systems from unauthorized access, loss or misuse. Obviously, this is a misstatement that must be corrected.

ECCS states in its Employment of Personnel Policy that the CEO shall make appointments based on merit without regard to race, religion, color, natural origin, sex, sexual orientation, marital status or membership in an employee organization. However, it is further stated that exception to this policy of merit shall be made for administrators. ECCS should explain why administrators are exempt from this policy of merit.

ECCS states it will use teachers provided by its online curriculum providers and that they will use teachers certified to teach students in Pennsylvania. However, ECCS does not explain how it will ensure that the teachers of the online curriculum providers hold appropriate Pennsylvania certification. In addition, the Department is concerned that Esperanza intends to rely solely on teachers provided by the online curriculum providers who are not employees of ECCS. This creates serious concerns, including how teachers are to be evaluated and how those who are not performing properly or adequately are to be disciplined or removed from a particular course or "classroom". In addition, the determination of how many teachers are required to provide adequate educational services may not be within Esperanza CCS's authority. Without a better understanding of the arrangements with curriculum providers and without being able to review contracts between curriculum providers and ECCS, the Department cannot agree that this arrangement is acceptable.

ECCS states that three school districts have expressed an interest in partnering with the cyber charter school to meet the needs of students in their school districts. There is no explanation of what this means. If granted a charter, ECCS is responsible for meeting the needs of the students enrolled in the cyber charter school, not students enrolled in school district schools. If ECCS intends to partner with school districts in some manner, it must provide a detailed explanation of what that means.

ECCS states that it will offer dual enrollment for students in the Philadelphia area at Esperanza College of Eastern University. For other areas of the state, ECCS will seek other dual enrollment

partnerships with other institutions of higher education. Cyber charter schools currently are not authorized to enter into agreements with institutions of higher education to offer postsecondary courses for postsecondary credit. ECCS can only purchase postsecondary courses from institutions of higher education and offer it as part of its secondary school program for high school credit.

In its application, ECCS states that the entry age for kindergarten is 5. However, it does not provide an entry age for a beginner, which is defined as a student entering school at the first level above kindergarten. ECCS must provide its entry age for beginners that are in compliance with regulations.

The National Network of Digital Schools is identified as ECCS's online education partner. However, ECCS does not explain what this means or what services NNDS will provide for ECCS. ECCS must provide this information so the Department understands the relationship with NNDS and that ECCS is not conveying control of the cyber charter school to another entity.

In the application, ECCS states that the school district is responsible for monitoring and maintaining attendance records. The Department does not understand what this means since monitoring attendance and maintaining such records is the responsibility of ECCS. ECCS must provide an explanation of what it means by this statement.
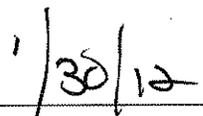
ECCS must provide a Memorandum of Understanding to document facility lease:

In its application, ECCS states that after being granted a charter it will sign a Memorandum of Understanding with Esperanza, Inc. to operate administratively from 4261 N. 5th Street, Philadelphia, PA. However, it has not provided any letter of intent or any other documentation from the owner of the building that there have been discussions about the availability of this facility for use by ECCS.

ECCS also states that it will have maintenance and custodial services as part of its management contract with Esperanza, Inc. In addition, the management contract with Esperanza, Inc. is to include Facility Development/Financing services that will help ECCS with leasing and developing sites throughout the state for learning centers. As stated previously, ECCS is required to provide a finalized management contract with the application.

Based on the deficiencies identified above, the Esperanza Cyber Charter School's

application submitted to the Department is denied.
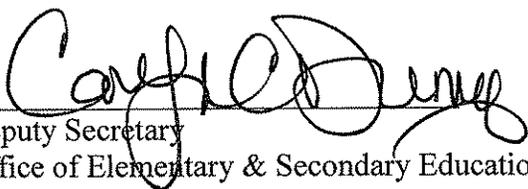
_____
Deputy Secretary
Office of Elementary & Secondary Education

_____
Date 1/30/12