

DEPARTMENT OF EDUCATION

In Re: Agora Cyber Charter School : 2004
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 1, 2004, Agora Cyber Charter School (“Agora”) submitted an application to operate as a cyber charter school. The Department provided 30 days notice of a public hearing held on December 16, 2004. At the hearing, Agora presented the Department with information about its application. Department personnel who had reviewed the application also posed questions to Agora’s representatives.

Findings of Fact

1. On October 1, 2004, Agora submitted to the Department an application to operate a cyber charter school.
2. 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.

24 P.S. §17-1745-A(f)(1).

3. Agora's focus and mission is to provide students with a higher level of science and technology education. (Application, p. 11).

4. Agora will provide character education and parenting skills as part of its curriculum. (Application, pp. 21-22).

5. Agora described an orientation program by which it will provide training for parents of students with disabilities.

6. Agora provided 23 letters of support for its charter plan and stated in its application that it would launch a campaign to cultivate sustainable support . (Appendix D).

7. Agora provided a copy of its curriculum and provided additional information about its curriculum at the public hearing. (Appendix A).

8. Agora did not provide details about the hardware and software it will use in its school. 24 P.S. §17-1747-A(6).

9. Agora provided little information regarding the technical support that would be available to students and parents. 24 P.S. §17-1747-A(9).

10. Agora failed to provide information regarding how it would maintain the confidentiality of records, particularly in the context of a cyber charter school. 24 P.S. §17-1747-A(10).

11. Agora provided limited information describing how it will meet the educational needs of students with disabilities. 24 P.S. §17-1747-A(13); (Application, pp. 24-25).

12. Agora failed to provide policies regarding truancy, absences and withdrawal of students. 24 P.S. §17-1747-A(14).

13. Agora will be located at a facility currently leased by another charter school and the lease is to be transferred to Agora, but Agora failed to provide a copy of the lease or ownership information. 24 P.S. §17-1747-A(16); (Application, pp. 62-63; Appendix I).

14. Agora did not provide a copy of its Articles of Incorporation.

15. Agora stated in its Application that it intended to contract with an external management company for assistance with financial management and other management functions of the school but did not provide a copy of a finalized management agreement. (Application, p. 32).

16. Agora identified that the age of admission of both kindergarten students and beginners would be 4.5 years. (Application Fact Sheet, p. 5).

17. There are internal inconsistencies in the budget document and inconsistencies between the budget document and information in the application. (Appendix G).

Conclusions of Law

1. Agora has shown its uniqueness and innovation by focusing on providing students with a higher level of science and technology education, providing character education and parenting skills, and providing training for parents of students with disabilities.

2. Although Agora provided 23 letters of support, it has not provided evidence of sustainable support for its cyber charter school plan. 24 P.S. §17-1745-A(f)(1)(i).

3. Agora's failure to show the extent to which the programs outlined in its application would enable students to meet the academic standards under 22 Pa. Code Ch. 4 does not meet the requirements of 24 P.S. §17-1745-A(f)(1)(iii).

4. Agora failed to meet the requirements of Section 1747-A(6) when it failed to identify the types of hardware and software that would be provided to each student by the charter school. 24 P.S. §17-1747-A(6).

5. Agora's failure to provide sufficient information about the technical support that would be available to students and parents does not meet the requirements of Section 1747-A(9). 24 P.S. §17-1747-A(9).

6. Agora's failure to sufficiently describe how it would maintain the confidentiality of records does not meet the requirements of Section 1747-A(10). 24 P.S. §17-1747-A(10).

7. Agora's failure to provide sufficient information regarding the delivery of educational services to students with disabilities fails to meet the requirements of Section 1747-A (13) of the CSL. 24 P.S. §17-1727-A(13). 24 P.S. §17-1747-A(13).

8. Agora's failure to provide policies regarding truancy, absences and withdrawal of students does not meet the requirements of Section 1747-A(14). 24 P.S. §17-1747-A(14).

9. Agora's failure to provide information about the ownership of the building that will house the cyber charter school and its failure to provide a copy of the lease that is being transferred to Agora does not meet the requirements of Section 1747-A(16). 24 P.S. §17-1747-A(16).

10. Agora failed to evidence that it is an independent entity to which a charter may be granted because it failed to provide a copy of its Articles of Incorporation.

11. If Agora is using an outside Educational Management Organization ("EMO") to manage its school, it must provide a finalized management agreement. *See, School District of the City of York v. Lincoln Edison Charter School*, 772 A.2d 1045, 1050 (Commw. Ct. 2001).

12. Agora cannot use the same age of admission for kindergarten students and for beginners. 22 Pa. Code §§11.14, 11.15.

13. The internal discrepancies in the budget and discrepancies between the budget and information in the application raise questions about the personnel to be hired and the accuracy of the budget.

14. Agora failed to provide sufficient information to demonstrate to the Department that it understands and would be prepared to meet accountability standards.

15. Because of the deficiencies identified in Agora's application, Agora has not shown its capability, in terms of support and planning, of providing comprehensive learning experiences to students under the charter. 24 P.S. §17-1745-A(f)(1)(ii).

16. Because of the deficiencies identified in Agora's application, Agora has not shown that it may serve as a model for other public schools. 24 P.S. §17-1745-A(f)(1)(v).

Discussion

Unique and Innovative

Agora evidenced innovation and uniqueness from other cyber charter schools by focusing its school's mission on providing students with a higher level of science and technology education, providing character education and parenting skills, and providing training for parents of students with disabilities. (Application, pp. 11, 21-22). More particularly, Agora stated at the public hearing that it would have an orientation program for parents of students with disabilities. This program would provide training for parents to teach them how to break down information, how to use manipulatives, how to develop flash cards, how to use a tape recorder, what to do to read a story, etc. Agora believes that with this type of parent training, the parents and Agora could handle many situations even with a curriculum such as K12, which is difficult for special education students. This parent training is innovative and unique.

However, the Department has found deficiencies with Agora's application and those deficiencies are addressed below.

Service Area

In its application, Agora stated that it would serve students primarily in southeast Philadelphia. (Application, p. 6). Agora also stated that the student group targeted for the school would be ethnically diverse with a marginally significant proportion of African-American students (60%-65%). (Application, p. 47). In addition, Agora stated that it would have a centralized building for its administrative hub and for use as a meetinghouse for students and parents, and that there would be a science and technology lab to give students direct experience with the latest computing technologies and research equipment. (Application, p. 6).

The Department advised Agora at the public hearing that the school was a statewide school and Agora could not limit enrollment to certain areas of the state. Although Agora's recruitment efforts may produce a school with 60%-65% African-American students, Agora cannot discriminate in its admission policies and practices on any basis that would be illegal if used by a school district. 24 P.S. §17-1723-A(b)(1).

Agora stated at the public hearing that it was now looking at regional facilities throughout the state and that it would hire teachers in different areas of the state. Agora also stated that instead of having students come to a centrally located science lab it had found a way to provide a science lab with the computer and with a teacher talking to students doing hands-on work.

Agora's statements at the public hearing indicate that it understands that a cyber charter school is a statewide entity and that it cannot limit enrollment to certain areas. In addition, the Department believes that Agora's statement that it would have a marginally significant African-American population (60%-65%) was made because of Agora's initial desire to serve students primarily in southeast Philadelphia. However, Agora must acknowledge that it understands that it cannot discriminate in its admission policies and practices on any basis that would be illegal if used by a school district.

Demonstrated Sustainable Support

“[S]ustainable support means support sufficient to sustain and maintain the proposed charter school as an on-going entity.” *See, e.g., In re: Ronald H. Brown Charter School*, No. CAB 1999-1, p. 18. In an attempt to demonstrate that there is sustainable support for its cyber charter school plan, Agora provided 23 letters of support. Agora stated in its application that it circulated petitions in support of the school and recruited local students and parents to participate in the school. (Application, pp. 40-41). Agora also stated in its application “the group was

prepared to launch a campaign to cultivate sustainable community support for the charter school plan.” (Application, p. 48). Finally, Agora lists as supporters groups that allegedly attended meetings to show their interest and support for Agora but Agora did not request any documentation of their attendance and support. (Application, p. 48).

Agora projects a first year enrollment of 600 students. (Application Fact Sheet). Although there is no requirement that a specific number of letters of support are needed to demonstrate sustainable support for a cyber charter school plan, the 23 letters of support provided by Agora do not demonstrate sustainable support for its cyber charter school plan. The letters of support provide general support for such a school but they do not include any prospective students who may be interested in the school or parents who may be interested in sending their children to the school. Again, there is no requirement that a certain number of students and parents must express their interest in attending the school, but the letters submitted by Agora do not demonstrate sustainable support for a cyber charter school projecting 600 students in its first year of operation.

In addition, Agora states in its application that it would “launch a campaign to cultivate sustainable community support for our charter school plan.” (Application, p. 48). However, Agora is required to demonstrate sustainable support during the application process – not after it receives a charter. Agora further states in its application that many organizations attended meetings to show their interest in and support for Agora, but Agora did not request any documentation of this support. (Application, p. 48). Agora also states that it conducted a survey of potential parents for the charter school, circulated petitions in support of the school, and recruited local students and parents to participate in the school. (Application, pp. 40-41).

However, Agora did not provide copies of the survey, the petitions, or letters of support from any students or parents recruited to participate in the school.

Agora failed to demonstrate sustainable support for its cyber charter school plan by teachers, parents and students. 24 P.S. §17-1745-A(f)(1)(i).

Curriculum

In its Application, Agora stated it would use the K12 curriculum, which is largely based on the Core Knowledge sequence. (Application, p. 15). A copy of the curriculum was attached as Appendix A. During the public hearing, Agora stated that it would augment the K12 curriculum, which is its base curriculum, and knows some things that would be helpful but would not currently know what level of augmentation would be necessary. However, the standards and benchmarks provided by Agora are not Pennsylvania standards and benchmarks. The standards that are to be met need to be aligned with Pennsylvania standards and this was not done. Because Agora used different benchmark grades in academic areas, there was not any crosswalk between the standards approved by the Pennsylvania State Board and the curriculum provided by Agora in Appendix A. By presenting curriculum at different benchmark grades, it is difficult to do a crosswalk to ascertain, with confidence, that the curriculum meets Pennsylvania standards.

In addition, Agora enumerated eleven academic goals, indicators, estimated baselines and targets. (Application, p. 36). However, it is not clear why Agora did not use the goals that are in the curriculum regulations for Pennsylvania. At the public hearing, Agora's representative stated she did not know where the goals came from but that these goals are what they would use for their program.

In conjunction with the curriculum, the Department has some concerns regarding the teachers to be hired by Agora. Agora's representative stated at the public hearing that they would use some teachers from a program at LaSalle University who would receive dual certifications in special education and another area. Dual certification is a great idea but the Department needs Agora to adequately explain how content needs in the upper grades would be developed or managed by what appears to be mostly special education teachers. Agora should address the Department's concern that the other part of a teacher's dual certification would be in a content area.

The Department finds that Agora has not met the requirements of Section 1745-A(f)(1)(iii) of the CSL because it has not shown the extent to which the programs outlined in the application would enable students to meet the academic standards under 22 Pa. Code Ch. 4.

Section 1747-A(6)

Section 1747-A(6) of the CSL requires the applicant to identify the types of hardware and software that would be provided to each student by the charter school. 24 P.S. §17-1747-A(6). Agora simply states in its application that: its students will access the online curriculum using PCs; internet services will be provided by Agora; the teachers will have a variety of software to assess student performance; and, each hub will have an interactive whiteboard and projector for teaching and training purposes. (Application, p. 44). This is not sufficient to meet the requirements of Section 1747-A(6). At the hearing, more information was provided about what Agora wanted to do with the system, such as virtual breakout rooms, whiteboards, electronic flip charts, but Agora did not provide any specifications about the hardware and software it expected to provide to students. At the public hearing, Agora's representative stated that Agora had not selected a platform but was looking at a couple of systems.

Although Agora does not have to provide every particular specification for the computers and software to be provided to students, Agora must provide at least general specifications so the Department can determine if the computers and software would adequately accommodate the programs Agora proposes to provide to its students.

Section 1747-A(9)

Section 1747-A(9) of the CSL requires the applicant to provide information about the technical support that would be available to students and parents. 24 P.S. §17-1747-A(9). Agora states in its application that it will provide student and parent training sessions with K12 technicians and educators, K12 technical online and email support, and school staff assistance online and at each hub. (Application, pp. 43-44). However, there is no specific description of when support will be available for students and parents, i.e., during what times of day, or how support personnel will be contacted about technical problems, or how quickly assistance will be rendered.

In addition, there is confusion about how many technical staff will be hired. The budget identified a Technology Coordinator but that position is not mentioned in the application and there are no qualifications listed for such a position. (Appendix G). However, there are two technical support positions listed in the application but no qualifications for those positions and they are not listed in the budget. (Application, p. 73; Appendix G). Therefore, it is unclear how many staff will be providing technical support or what their job duties will actually entail. It appears that only one or two people will be hired to handle all the internal and external technology needs, including buying, distributing, maintaining, training and troubleshooting for all the students. In addition, non-technology staff will need a considerable amount of upfront training to effectively use the hardware and software, which will apparently also be the

responsibility of one or two technology staff. Too often the time to implement and use technology is more consuming than anticipated. The Department wants to be certain that Agora understands what is needed to provide sufficient and effective technical support in a cyber charter school.

The Department finds that Agora has failed to meet the requirements of Section 1747-A(9) because it failed to provide sufficient information about the technical support that would be available to students and parents.

Section 1747-A(10)

The CSL requires applicants to describe their policies for ensuring privacy and security measures that will guarantee the confidentiality of data gathered online. 24 P.S. §17-1747-A(10). Agora identified that each student would have a registration identification, a username and a password. (Application, p. 44). According to Agora, the K12 curriculum is password protected and the school base server that houses student data will be protected by a firewall. (Application, p. 44). At the hearing, when asked where confidential materials would be housed and how they would be handled, Agora stated that it understood it needed to keep documents confidential and would have a separate secretary take care of confidential records. However, Agora acknowledged that it needed to address more specifically how Agora will secure its records and ensure confidentiality. Therefore, Agora failed to meet the requirements of Section 1747-A(10).

Section 1747-A(13)

Agora provided a couple of pages of information describing how it will meet the educational needs of students with disabilities. (Application, pp. 24-25). However, Agora did not provide a copy of its policies and procedures for providing educational services to students

with disabilities. Since policies and procedures were not provided, there was not sufficient information regarding the special education program and delivery of services. For example - there was insufficient explanation of the supervision of the program, failure to provide a policy on suspension and expulsion of students with disabilities, and failure to describe the screening and identification of students with disabilities by the school. The failure to provide policies and procedures for providing educational services to students with disabilities does not meet the requirements of Section 1747-A(13) of the CSL.

Proper and adequate supervision of the special education program and special education teachers is essential in any school, but particularly in a cyber charter school. Agora has not provided for a special education supervisor in its application or within its budget. In response to questions about supervision of the special education program, Agora's representatives stated that they have provided training for special education and know what it takes to provide a proper program. In addition, Agora's representative stated that Dr. Brown is a psychologist and Mr. Gardiner holds a supervisory certificate so supervisory issues are covered. Finally, Agora's representative stated that there will be central supervision for the special education program and although there may not have been identification in the application of a special education supervisor it was taken into consideration in the budget.

The Department needs to have more specific information regarding the supervision of the special education program. The Department acknowledges that both Dr. Brown and Mr. Gardiner demonstrated knowledge of special education but there are shortcomings in the written application. Dr. Brown intends to remain involved with at least one other charter school and the Department is concerned about the amount of supervision Dr. Brown can provide to Agora's special education program. In addition, Mr. Gardiner identified himself as simply submitting the

application with Dr. Brown. There was no testimony or other indication that he would be involved in the day-to-day operations of Agora or that he would hold any position at Agora, particularly since he is also the CEO of another charter school. Although Agora does not know the number of special education students it would enroll, it must more specifically describe how the special education program and teachers will be supervised. Agora must also explain how a special education supervisor was taken into consideration in the budget when no such position is provided for in the budget.

In addition, special education teachers cannot be part of the 25% of teachers that are not required to hold appropriate State certification. Although Agora stated at the public hearing that all its teachers would be certified, this was not clear in Agora's application and the Department wants it clearly understood that all special education teachers must hold appropriate State certification. 22 Pa. Code §711.5.

Agora states that it will implement each student's Individualized Education Program ("IEP") as specified by the sending district's Committee on Special Education. (Application, p. 25). Agora states that it will provide services either through the school, an Intermediate Unit ("IU"), or a fee for service program. These services include "notifications." (Application, p. 25). The Department does not know what "notifications" means and the Agora representatives could not explain what this meant either. Therefore, it should be excluded from the application.

Although Agora states that it will implement a student's IEP from his or her sending district, this does not always or even usually apply, as a free, appropriate public education ("FAPE") must be provided in conformity with an IEP, and the IEP from the student's prior placement often needs to be revised immediately by the cyber charter school to "fit" with a cyber delivery model. Agora fails to provide a description of its screening process and how students

with disabilities will be identified by Agora. Agora must describe its procedures to screen and identify students with disabilities.

Agora states that it will follow appropriate team procedures as specified in the Individuals with Disabilities Education Act (“IDEA”). Agora further states that “all teachers will have access to each student’s IEP” (Application, p. 25). However, this policy violates the Family Educational Rights and Privacy Act (“FERPA”) because only teachers with a legitimate educational interest should have access to a student’s IEP.

Another FERPA issue rises in connection with Agora’s two-part admission process. An application form is completed with basic student data – name, parent and/or guardian, contact information, current school attending, etc. – and then parents must sign a form that they attended an informational session or met with a Board member or staff member and read the educational vision and method of the school. (Application, p. 68). The Department has concerns that this may allow a member of the Board of Trustees to see personally identifiable information of students, which would not be permitted under FERPA because the Board member would not have a legitimate educational interest in the information. Thus, Agora must show the Department that these concerns have been appropriately addressed.

In its application, Agora described its policies regarding student suspension and expulsion. (Application, pp. 90-92). However, the policies and procedures do not address students with disabilities. The statement on page 92 that all due process requirements will be respectively followed for regular and special education students is not sufficient to meet the requirements that suspension and expulsion policies be described, including for students with disabilities.

Agora needs to provide more information describing how it intends to provide related services to students with disabilities, particularly in remote/rural areas. Although Agora's representative stated at the public hearing that it was piloting with Friend's Hospital for video hook-up with a psychiatrist for psychological and counseling services, the Department needs more information of how related services are to be provided. In addition, Agora must understand that any transportation services required by a student with disabilities pursuant to his or her IEP is Agora's responsibility.

The Department does not question the knowledge of Dr. Brown and Mr. Gardiner regarding the provision of educational services to students with disabilities. However, Agora has not provided policies and procedures regarding its special education program and has provided very limited information about how it will provide appropriate services to students with disabilities. The Department has required that cyber charter applicants provide a copy of their policies and procedures regarding the provision of services to students with disabilities. Thus, Agora must also provide the Department with a copy of its policies and procedures - not just a summary of what it intends to do.

Section 1747-A(14)

The CSL requires applicants to describe policies regarding truancy, absences and withdrawal of students, including the manner in which the charter school will monitor attendance. 24 P.S. §17-1747-A(14). Agora stated that it would develop a system for maintaining up-to-date student enrollment data and would use a software program to track enrollment data. (Application, pp. 34-35). Agora also stated that it would require students to log on to the K12 curriculum daily and that to avoid being truant the student must register each day and for each class. (Application, p. 65). In addition, Agora will articulate attendance policy in

the parent handbook and follow attendance guidelines in the Public School Code for unexcused absences. (Application, p. 65).

Although Agora provided a simple framework for attendance and truancy, it did not provide policies regarding truancy, absences and withdrawal of students. The limited information provided does not include any policies. Since neither a parent or student handbook was provided, the Department does not know what policies will be set forth in the parent and student handbooks regarding attendance, truancy and withdrawal of students. The reference to following the attendance guidelines in the School Code for unexcused absences also does not explain Agora's policies regarding attendance, truancy and withdrawal of students, or how Agora will work with students' resident school districts regarding truancy issues.

The Department finds that Agora failed to meet the requirements of Section 1747-A(14).

Section 1747-A(16)

Section 1747-A(16) of the CSL requires an applicant to provide the addresses of all facilities and offices of the cyber charter school, the ownership thereof and any lease arrangements. Agora provided the address of the facility in which it would be located. (Application, p. 62). However, in its application Agora failed to provide any ownership information about the facility. In addition, Agora stated that the facility is currently leased to another charter school, which will be moving to another location on or about July 1, 2005, and that arrangements have been made for the lease to be transferred to Agora. (Application, p. 63).

Generally, in its application a cyber charter school does not have to provide a copy of a lease because it generally has only a letter of intent or some minimal information regarding a lease. However, in this instance, since Agora has a lease that is to be transferred to it, Agora must provide a copy of the lease in its application.

In addition, Agora states that the facility was recently renovated and already complies with city building codes. Agora then states that plans for renovating the facility, including plans to ensure that it complies with applicable building codes and accessibility for individuals with disabilities, will be developed as the planning process progresses. (Application, p. 63). This creates confusion about the renovation of the facility and its compliance with applicable building codes. Agora needs to more fully explain the renovation plans and compliance with building codes in order to eliminate this confusion.

The Department finds that Agora failed to meet the requirements of Section 1747-A(16).

Articles of Incorporation

A cyber charter must be organized as a public, nonprofit corporation and must be an independent public school. 24 P.S. §17-1703-A. In order for the Department to verify that Agora is a public, nonprofit corporation and an independent public school, a copy of its Articles of Incorporation must be submitted with the application. This requirement is implicit in the Pennsylvania Supreme Court's decision in *West Chester Area School District v. Collegium Charter School, et al.*, 571 Pa. 503, 812 A.2d 1172 (2002). In *Collegium*, the Court denied one of the school district's claims because Collegium's articles of incorporation established that it was organized as a nonprofit corporation under Pennsylvania law. *Collegium*, 571 Pa. at 524, 812 A.2d at 1185

It is imperative that the Articles of Incorporation be included in the application so the Department is certain that Agora is an independent nonprofit corporation and that it is not the subsidiary of another entity. Agora failed to meet this requirement because it did not provide a copy of its Articles of Incorporation with its application.¹

¹ Agora also identifies itself as Agora Cyber Charter School on the cover of the application. The bylaws state that the name of the corporation is Agora Charter School and the cover sheets for Appendices B through J identify the

Management Agreement

Agora states in its application that it “plans to contract with an external management company for assistance with financial management and other management functions of the school.” (Application, p. 32). In its application, Agora states that a contracted educational management company will provide the School Business Manager. (Application, p. 88). When asked about the external management company during the public hearing, Agora’s representative stated that it was a company to handle paychecks but that the accountant and bookkeeper would be part of Agora’s staff, although such positions are not specified in Agora’s budget. In its application, Agora states that the Business Manager would provide more than just payroll services and that a bookkeeper would be hired if necessary to provide the Business Manager with operational data. (Application, p. 62). Agora stated at the public hearing that the external management company would not provide “other management functions of the school” as was stated in its application.

Section 1749-A of the CSL subjects cyber charter schools to specific provisions of the CSL and other acts and regulations. Pursuant to Section 1749-A, cyber charter schools are subject to Section 1716-A of the CSL. At issue here is the requirement, implicit in Section 1716-A(a) of the CSL, that a charter school’s board of trustees must maintain ultimate control over the operation of the school. *West Chester Area School District v. Collegium Charter School*, 760 A.2d 452, 468-69 (Pa. Commw. Ct. 2000), *aff’d* 571 Pa. 503, 812 A.2d 1172 (2002). The Commonwealth Court has interpreted this provision as requiring that a charter application must include a finalized version of a management agreement so that proper determination can be made

school as Agora Charter School. This is another reason it is imperative to provide a copy of the Articles of Incorporation – so the proper corporate name can be ascertained since that is the entity to which a charter would be granted if the application would be approved. Agora must also conform documents in its application with the proper corporate name of the school.

whether the application comports with the requirements of the law. *School District of the City of York v. Lincoln-Edison Charter School*, 772 A.2d 1045, 1050 (Commw. Ct. 2001). Proper review of the application cannot be made until the essential components, such as a management agreement, are before the Department. *Id.*

Therefore, Agora must clarify the responsibilities of the external management company with which it expects to contract. If Agora expects to enter into a management agreement with an external management company that will provide management services to Agora, it must provide the Department with a copy of the finalized version of the agreement so that the Department can determine whether it comports with the CSL.

Age of Admission

Agora identified the minimum age of admission for kindergarten students to be 4.5 years of age. Agora also identified the minimum age of admission for beginners to be 4.5 years of age. (Application Fact Sheet, p. 5). Regulations provide that the minimum age of admission for kindergarten students may not be less than 4 years, no months, before the first day of the school term. 22 Pa. Code §11.14. Regulations also provide that the minimum age of admission for beginners may not be less than 5 years 7 months before September 1, nor more than 6 years, no months, before the first day of the school term. 22 Pa. Code §11.15. In addition, the maximum age of admission to kindergarten must be less than the district's age of admission for beginners. 22 Pa. Code §11.14.

Agora must correct its age of admission for beginners, which cannot be 4.5 years of age and cannot be the same as the entry age of admission for kindergarten students.

Budget

There are internal inconsistencies in the revised budget submitted by Agora, as well as inconsistencies of information provided in the revised budget and in the application.² On the application fact sheet and on page 73 of the application, Agora states it will have 26 teachers. (Application Fact Sheet, p. 5; p. 73). The initial budget also provided for 26 teachers. (Appendix G). The revised budget provides for 15 teachers. (Appendix G). The application and the initial budget provided for 6 teacher aides. (Application, p. 73; Appendix G). The revised budget provides for 4 teacher aides. (Appendix G).

The Department understands that Agora apparently changed the number of teachers and teacher aides after talking to other cyber charter schools that believed Agora's proposed teacher to student ratio and teacher aide to student ratio could be higher than Agora first indicated. However, the revised budget and the information in the application are now inconsistent. In addition, even though Agora changed the number of teachers and teacher aides in the revised budget it did not change the information on the employee benefits worksheet. Therefore, the employee benefits worksheet is inconsistent with the revised budget.

The cost of some services and equipment identified in the initial budget were significantly changed in the revised budget. The initial budget provided \$75,000 for professional services and the revised budget provides \$270,000 for professional services. The initial budget provided \$180,000 for books/instructional materials and the revised budget provides \$1,298,850 for books/instructional materials. The initial budget provided \$812,500 for equipment purchases and the revised budget provides \$305,000 for equipment purchases. The Department understands that Agora may have recalculated the numbers of the revised budget based on

² Agora initially provided a budget with its application, attached as Appendix G. Prior to the public hearing, Agora provided the Department with a revised budget, which will also be part of Appendix G of the application.

additional information it received about costs, etc. However, the Department wants to be certain that Agora understands that even though the budget is a projection it needs to be a realistic budget and it needs to be accurate without internal inconsistencies and without being inconsistent with information in the application.

In addition, the revised budget provides for a Technology Coordinator but there is no such position identified in the application. In the application, Agora states that there will be 2 technology support positions, not a technology coordinator. (Application, p. 73). The revised budget does not provide for 2 technology positions. (Appendix G). The application states qualifications for a school nurse but the revised budget does not include a nurse. (Application, pp. 72, 87; Appendix G). There are also no qualifications in the application for the Principal and the webmaster, but they are provided for in the revised budget. (Application, pp. 70-72, 85-88; Appendix G).

Agora must correct calculation inaccuracies and address the inconsistencies within the budget document and with information in the application.

In relation to finance issues, the Department notes that Agora's bylaws provide that "under the direction of the Treasurer, the Chief Executive Officer shall receive all funds including local, state and federal funds as well as privately donated funds . . . [and] shall make payments out of these funds as needed for the proper conduct of business." (Appendix E, p. B8). In addition, "the Chief Executive Officer shall also pay the salaries of school employees and maintain a petty cash fund not to exceed two hundred dollars" (Appendix E, p. B8). This appears to be a serious breach of universally accepted internal control principles. Agora needs to address this issue or provide the Department with an explanation why Agora does not believe this is a breach of universally accepted internal control principles.

Accountability

The Department is concerned with Agora's understanding and preparedness to meet accountability standards, not only from the perspective of the Pennsylvania Accountability System (including No Child Left Behind requirements), but also within the governance structure. Some of Agora's documentation indicates that Agora thinks the Pennsylvania Accountability System consists only of the Pennsylvania academic standards. Agora did not sufficiently convey to the Department that it understood the concept of Report Cards, which is a fundamental requirement of the accountability system. Agora also seemed to be confused with Adequate Yearly Progress ("AYP") concepts. Agora must show the Department that it understands these concepts because AYP would not be forgiving just because this would be a new school.

So that the Department knows that Agora understands and is prepared to meet accountability standards, Agora must provide the Department with information that helps to show its understanding of the Pennsylvania Accountability System and its plan to produce Report Cards for its community, incorporating federally required information.

Timetable

Agora submitted a timetable of the projected steps and dates leading to the opening of its school. (Application, pp. 94-96). Although this is a small point relative to the other deficiencies identified above, Agora's timetable was based on submission of an application to a school district. The timetable sets the deadline for submitting Agora's charter as November 15, 2004, when it was actually October 1, 2004. In addition, there are references to school district action and to a conditional charter, which obviously do not pertain to cyber charter school applications submitted to the Department.

Thus, Agora should revise its timetable to more accurately reflect a timetable based on submission of its application to the Department.

Section 1745-A(f)(1)(ii)

One of the criteria by which the Department is to evaluate cyber charter school applications is the capability of the applicant, in terms of support and planning, to provide comprehensive learning experiences to students under the charter. 24 P.S. §17-1745-A(f)(1)(ii). Agora's proposed mission and focus of the school evidence its uniqueness and innovation. In addition, the Department acknowledges that Dr. Brown and Mr. Gardiner have experience in running brick and mortar charter schools. However, the deficiencies and lack of sufficient information as described in this decision, show that Agora is not, at this time, capable, in terms of support and planning, of providing comprehensive learning experiences to students under the charter.

Section 1745-A(f)(1)(v)

Another criterion by which the Department is to evaluate a cyber charter school application is the extent to which the cyber charter school may serve as a model for other public schools. As stated above, because of the deficiencies in the application, the Department finds that Agora, at this time, would not serve as a model for other public schools.

Conclusion

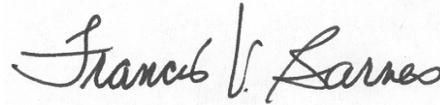
The Department finds that Agora Cyber Charter School: (1) has not demonstrated sustainable support for its cyber charter school plan; (2) has not demonstrated the capability, in terms of support and planning, to provide comprehensive learning experiences for students; (3) has not demonstrated the extent to which its programs will enable students to meet the academic

standards; (4) has not met all the requirements of section 1747-A; and (5) would not serve as a model for other public schools.

Based on these findings, the Department, at this time, denies the grant of a charter to Agora Cyber Charter School. Pursuant to the CSL, Agora may revise and resubmit its application to the Department, which would have 60 days from the date of resubmission to decide to grant or deny the charter. If Agora decides to revise and resubmit its application, it must do so by at least May 2, 2005, so that if the Department granted a charter in 60 days, Agora would have time from July 1, 2005 to prepare for and open its school.

Agora also has the option under the CSL to appeal this denial of a charter to the Charter School Appeal Board.

Pennsylvania Department of Education

A handwritten signature in black ink that reads "Francis V. Barnes". The signature is written in a cursive style and is positioned above a horizontal line.

Francis V. Barnes, Ph.D.
Secretary

Date: 1/28/05