



## Findings of Fact

1. On October 1, 2002, Commonwealth Connections 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. In its application, Commonwealth Connections provided 8 letters of support from business and political leaders. (App., Appendix H).<sup>1</sup>

4. At the December 16<sup>th</sup> hearing, 4 people from the public spoke in favor of granting Commonwealth Connections a charter, which included a retired teacher, a parent, a Pennsylvania Senator and a former school superintendent who is now an assistant professor at a local college. (N.T. at 3-18).<sup>2</sup> One speaker also wrote one of the letters of support, and another speaker was listed as a founder of Commonwealth Connections.

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<sup>1</sup> App. refers to the application submitted to the Department by Commonwealth Connections.

<sup>2</sup> N.T. refers to Notes of Testimony from the December 16, 2002 hearing regarding Commonwealth Connections.

5. Commonwealth Connections provided the results of a telephone survey of approximately 300 adult parents that was conducted between September 24 and 26, 2002. (App., Appendix H).

6. The survey results were not specific to Commonwealth Connections. (App. Appendix H).

7. Documents provided by Commonwealth Connections at the hearing allegedly set forth parental comments about Connections Academy, Inc. (“Connections Academy”), which is a wholly owned subsidiary of Sylvan Ventures, the research and investment arm of Sylvan Learning Systems, Inc. (App., Appendix H; p. 34).

8. Connections Academy is a private company with which Commonwealth Connections anticipates contracting the operations of the cyber charter school. (App., p. 34).

9. Commonwealth Connections failed to provide the Department with a finalized management agreement between Commonwealth Connections and Connections Academy.

10. Although Commonwealth Connections stated in its application that it is a non-profit corporation, it failed to provide a copy of its Articles of Incorporation evidencing its establishment as such. (App., p. 32).

11. The Calvert Curriculum, which is a text-based curriculum, is the core curriculum to be used by Commonwealth Connections. (App., at p. 11; N.T. at 28).

12. Commonwealth Connections will supplement the Calvert Curriculum, as needed, to assure the curriculum aligns with Pennsylvania standards. (App., at pp. 11-12; N.T. at 28).

13. Commonwealth Connections does not use technology as the primary medium of instructional delivery, which is instead delivered via print and hands-on curriculum materials,

face-to-face interaction with the learning coach, and frequent consultation with program teachers. (App., p. 26).

14. Commonwealth Connections curriculum is primarily physical and offline. Primary students may spend 0-15% of learning time online, upper elementary students may spend 15-25% of learning time online, and middle school students may spend 25-40% of learning time online. (App., at p. 12).

15. Learning coaches, who are generally parents, are not required to log online every day but must send a portfolio of the student's work to Commonwealth Connections every 4-6 weeks, or more often if required. (N.T. at 32).

16. Although most of Commonwealth Connections curriculum is not computer based, the computer is the basic organizational device for assessing, managing and tracking the student's learning, whether online or offline. (App., p. 15).

17. Commonwealth Connections failed to provide the addresses of all facilities and offices of the cyber charter school, the ownership thereof and any lease arrangements. 24 P.S. §17-1747-A(16).

18. Commonwealth Connections proposes to have one member of its Board of Trustees appointed by the Department, and one member who is a representative from Connections Academy, or its successor.

19. In Connections Academy's Handbook, there is reference to when a student may be considered truant, but there are no policies regarding truancy, absences and withdrawal of students. 24 P.S. §17-1747-A(14).

## Conclusions of Law

1. Commonwealth Connections failed to provide the Department with evidence of demonstrated, sustainable support for the cyber charter school by teachers, parents or guardians and students. 24 P.S. §17-1745-A(f)(1)(i).
2. Commonwealth Connections failed to meet the requirements of Section 1747-A(16) of the Charter School Law (“CSL”) because it did not provide the Department with the addresses of all facilities and offices of the cyber charter school, the ownership thereof and any lease arrangements.
3. Commonwealth Connections failed to meet the requirements of Section 1747-A(14) of the CSL because it did not provide policies regarding truancy, absences and withdrawal of students.
4. Commonwealth Connections failed to meet the requirements of the CSL as interpreted by the Pennsylvania Commonwealth Court because it failed to provide a finalized management agreement between Commonwealth Connections and Connections Academy. *See, School District of the City of York v. Lincoln-Edison Charter School*, 772 A.2d 1045, 1050 (Commw. Ct. 2001).
5. The Department is not authorized to appoint a member of the Board of Trustees of Commonwealth Connections.
6. A representative of Connections Academy may not be a voting member of the Board of Trustees of Commonwealth Connections. *See, e.g., West Chester Area School District v. Collegium Charter School*, 760 A.2d 452, 468-70 (Pa. Commw. 2000), *aff’d*, 2002 Pa. LEXIS 2836 (Pa. Dec. 20, 2002).

7. Commonwealth Connections must provide a copy of its Articles of Incorporation to verify that it is an independent non-profit corporation and not a subsidiary of another entity.

*See, e.g.,* 24 P.S. §17-1703-A (definition of “cyber charter school”).

8. Commonwealth Connections’ representations (a) that the core of its curriculum is text-based, (b) that its curriculum is primarily physical and offline, and (c) that technology is not the primary method of delivery of instruction does not evidence that Commonwealth

Connections fits within the CSL’s definition of a cyber charter school, which requires that the school use “technology in order to provide a significant portion of its curriculum and to deliver a significant portion of instruction to its students through the Internet or other electronic means.”

24 P.S. §17-1703-A.

9. Although Commonwealth Connections referenced Section 1743-A(c) and (d) in the compliance checklist included in its application, the page and Appendix references do not describe how Commonwealth Connections will make the required information available to school districts and parents, and therefore, does not meet the requirements of Section 1743-A(c) and (d).

10. Commonwealth Connections will not serve as a model for other public schools.  
24 P.S. §1745-A(f)(1)(v).

### **Discussion**

As noted above, Commonwealth Connections has failed to meet several requirements of the Charter School Law. We review these matters below.<sup>3</sup>

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<sup>3</sup> On January 8, 2003, Commonwealth Connections provided additional documents to the Department. These documents were submitted in an attempt to rectify deficiencies in the application that were identified at the public hearing. These documents include: (1) a list of Board members; (2) bylaws; (3) a management agreement; (4) responses to written comments submitted to the Department by the Pennsylvania State Education Association; and, (5) Exhibit I-Commonwealth Connections Cyber Charter School Application. On January 10, 2003, Commonwealth Connections provided additional information, which identified two potential locations for the school.

## **Demonstrated Sustainable Support**

First, Commonwealth Connections failed to demonstrate that there is sustainable support for its school. In an attempt to demonstrate that it met this requirement, Commonwealth Connections provided the results of a telephone survey of approximately 300 adult parents. (App., Appendix H). The results of the survey simply evidenced that 89% of the parents would be interested in a school that has a flexible personalized learning plan for each student and that 68% of the parents thought it was important for the state to offer a state-approved program that was provided by a leading educational services company. These results provide little, if any, evidence that there is sustainable support specifically for Commonwealth Connections. In short, the survey failed to ask parents the key question: “Do you support Commonwealth Connections,

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Although not explicitly stated at the public hearing, the application process for cyber charter school applicants was completed at the end of the hearing. The Department had received the applications, held a public hearing and received written comments from the public. These documents and testimony constitute the certified record reviewed by the Department. Therefore, all that remained was for the Department to review and consider those materials and make its decision to grant or deny a charter.

Permitting applicants to submit additional documents to the Department at any time after the hearing, but prior to a decision being issued, would needlessly delay the Department’s hearing process. In fact, if Commonwealth Connections were permitted to submit these documents, it would signal to applicants that they could continue submitting supplemental materials at any time prior to the issuance of a decision. This would deprive the Department of control of the application proceedings, because it would mean that decisions would have to be delayed until all supplemental materials were received and considered. Of course, during the process of reviewing and assessing one set of supplemental documents, the applicant might then submit another, thereby causing unacceptable delays to the hearing process.

The Charter School Law (“CSL”) provides that: (1) cyber charter school applications are to be submitted by October 1 of the school year preceding the school year in which the cyber charter school proposes to commence operation; (2) the Department must hold a public hearing, and, (3) the Department must make a decision to grant or deny the charter within 120 days of receipt of the application. 24 P.S. §17-1745-A(d) and (e). There are no provisions in the CSL that require the Department to allow the submission of additional documents, either after the application is submitted or after the public hearing, and, therefore, we have declined to accept them into the record in this matter.

As a result, the Department’s decision in this matter is based on documents received in the application, documents and information received at the public hearing, and written comments received from the public within the time period identified in the notice of the public hearing. Pursuant to the CSL, if the Department denies the grant of a charter, a cyber charter applicant may revise and resubmit its application to the Department. 24 P.S. §17-1745-A(g). Under this provision, Commonwealth Connections is permitted to revise and resubmit its application to the Department.

As a final note, Commonwealth Connections has not been prejudiced by the Department’s failure to accept into the record and consider the additional documents that it submitted on January 8 and 10, 2003. These documents do not correct all of the deficiencies in Commonwealth Connections’ application as identified by the Department in this decision. Therefore, even if the Department had accepted the additional documents into the record and considered them as part of the application, the Department still would have denied the grant of a charter to Commonwealth Connections.

a cyber charter school that has a flexible personal learning plan for each student and will be managed by a subsidiary of Sylvan Learning Systems, Inc.?” *See, e.g., In re: Ronald H. Brown Charter School*, No. CAB 1999-1, pp. 9, 20-21.<sup>4</sup>

Sustainable support is to be demonstrated by teachers, parents or guardians and students. 24 P.S. §1745-A(f)(1)(i). “[S]ustainable support means support sufficient to sustain and maintain the proposed charter school as an on-going entity.” *Id.* at 18. Although sustainable support is determined in the aggregate, *Id.* at 19, Commonwealth Connections failed to provide sufficient evidence of sustainable support from the groups of people listed in the CSL. One retired teacher and one parent spoke at the hearing in support of Commonwealth Connections. Copies of quotes allegedly made by parents in other states about Connections Academy, the private company with which Commonwealth Connections expects to contract, does not evidence sustainable support for Commonwealth Connections in Pennsylvania. The letters of support provided in the application were from political and business leaders. There were no letters of support from teachers, parents or students. As stated above, the parent survey was not specific to Commonwealth Connections. Petitions signed by parents, teachers, and/or students stating their support for Commonwealth Connections could have provided the documentation necessary to demonstrate sustainable support. *See, e.g., In re: Ronald H. Brown Charter School*, No. CAB 1999-1. However, the Department is not persuaded that the parent survey, the 8 letters from political and business leaders and the 4 speakers demonstrate sustainable support for Commonwealth Connections.

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<sup>4</sup> In making decisions on cyber charter school applications, the Department is guided by prior interpretations of the CSL from the State Charter School Appeal Board and the courts. Such decisions are particularly relevant where, as here, the provisions of the CSL that apply to traditional charter schools are so similar to the provisions of subdivision (c) of the CSL that are applicable to cyber charter schools.

### **Section 17-1747-A(14)**

Second, Commonwealth Connections has failed to meet all of the requirements of Section 1747-A of the CSL. Section 17-1747-A(14) requires the inclusion of policies regarding truancy, absences and withdrawal of students. Although Commonwealth Connections stated in its application that students may be found truant if they fail to meet certain requirements, there were no policies regarding truancy or absences or the withdrawal of students. (App., p. 47; Appendix F, p. 15). Therefore, the Department is unable to determine that Commonwealth Connections will have specific policies regarding truancy, absences and the withdrawal of students and that such policies will comply with the law.

### **Section 17-1747-A(16)**

Section 1747-A(16) requires the applicant to provide the addresses of all facilities and offices of the cyber charter school, the ownership thereof and any lease arrangements. Commonwealth Connections failed to identify any facility or office in which the cyber charter school would be located. Commonwealth Connections merely stated that the school would be located in the Harrisburg area and provided a copy of a “vanilla shell description” of a floor plan. Commonwealth Connections also provided a copy of a Rider to Office Lease Agreement. (App., Appendix G). Even if this generic Rider to Office Lease Agreement would meet part of the requirements of Section 1747-A(16), the Department cannot approve an application that fails to identify a facility and the ownership thereof. *See, In re: Phoenix Academy Charter School*, No. CAB 1999-10, pp. 20-22.

### **Management Agreement**

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. *See, West Chester Area School District v. Collegium Charter School*, 760 A.2d 452, 468-69 (Pa. Commw. Ct. 2000), *aff'd*, 2002 Pa. LEXIS 2836 (Pa. Dec. 20, 2002). The Commonwealth Court has interpreted this provision by requiring that a charter application must include a finalized version of a management agreement so that proper determination can be made 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, since Commonwealth Connections expects to enter into a management agreement with Connections Academy, 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.<sup>5</sup>

### **Board of Trustees**

Related to the issue of appointment or election of the board of trustees is Commonwealth Connections' representation that it would like to have the Department appoint one member to the board of trustees and would like to have a representative of Connections Academy as a member of the board of trustees. The Department is not authorized to appoint a member of the board of

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<sup>5</sup> During testimony at the December 16 hearing, a question arose about how a management agreement could be finalized when a Board of Trustees had not yet been appointed. The Pennsylvania Supreme Court recently affirmed the Commonwealth Court's decision in *Collegium*, in which a similar issue was raised. *See, West Chester Area School District v. Collegium Charter School, et al.*, 2002 Pa. LEXIS 2836 (Pa. Supreme Ct. December 20, 2002). In *Collegium*, the school district argued that Collegium's charter should have been denied because a for-profit entity had completed the application and obligated Collegium's Board of Trustees to contract with the for-profit company. The Court held that the "CSL implicitly acknowledges that the board of trustees will not be formed at the time the application is submitted" because the CSL requires that the application contain a description and method for appointment or election of the members of the board of trustees. *Id.* at 20. The Supreme Court agreed with the Commonwealth Court that all of the terms for inclusion in the application would be determined without input from the board of trustees. *Id.*

trustees when the Department is the chartering entity. Moreover, it is also improper for Connections Academy to have a representative as a voting member of the board of trustees because the board of trustees is to be independent from the management company and is to have ultimate control over the charter school. *See, Collegium*, 760 A.2d at 468-70. Even though one member may not be able to determine the policy of the board of trustees, having a board member that represents the for-profit management company undermines the school's independence and creates the appearance of a conflict of interest.<sup>6</sup>

### **Articles of Incorporation**

Notwithstanding the fact that the board of trustees does not need to be appointed or elected prior to submission of the application, there must be a copy of the Articles of Incorporation submitted with the application. This is implicit in the *Collegium* decision when the Court denied one of the school district's claims because *Collegium's* articles of incorporation established that it was organized as a non-profit corporation under Pennsylvania law. *Collegium*, 2002 Pa. LEXIS 2836 at \*34. Without being able to review the Articles of Incorporation, the Department simply cannot determine that the charter school is "an independent public school" and a "public, nonprofit corporation" as all cyber charter schools must be. *See*, 24 P.S. §17-1703-A (definition of "cyber charter school"). It is imperative that the Articles of Incorporation be included in the application so the Department is certain that the charter school is an independent non-profit corporation and that it is not the subsidiary of another entity. Articles of Incorporation is the only way the Department can verify that Commonwealth Connections is an independent non-profit corporation.

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<sup>6</sup> Connections Academy's representative testified at the hearing that it likes to have a representative on the charter school's board of trustees so that person can answer any questions the board members may have. However, a representative of the management company can attend the charter school's board meetings and answer any questions without being a member of the board. Therefore, the Department will not permit a representative of the management company to be a member of the board of trustees of the cyber charter school.

### **Definition of a Cyber Charter School**

The CSL defines a cyber charter school as an independent public school that uses “technology in order to provide a significant portion of its curriculum and to deliver a significant portion of instruction to its students through the Internet and other electronic means.” 24 P.S. §17-1703-A. The Department finds it difficult to reconcile this definition with statements made in the application and by Connections Academy’s representative at the hearing.

Although students will be provided with computers, Commonwealth Connections’ curriculum is primarily text-based and not provided through technology. (App., p. 11). The curriculum is primarily physical and offline. (App., p. 12). Most of Commonwealth Connections’ curriculum is not computer based. (App., p. 15).

In addition to the curriculum being primarily offline and text-based, Commonwealth Connections does not use technology as the primary medium of instruction. (App., p. 26). Learning coaches, who are generally the students’ parents, are not required to log on to the computer everyday. (N.T. at 32).

The computer is generally used for assessing, managing and tracking the student’s learning. (App., p. 15). Although Commonwealth Connections will supplement the text-based curriculum with some online materials and activities, there is no indication that this supplemental online material will constitute a significant portion of the curriculum or that a significant portion of instruction will be delivered through technology.

Although a certified teacher will be assigned to each student and will communicate with the student and the learning coach, there is no evidence the teacher is providing a significant portion of the curriculum or delivering a significant portion of instruction through technology.

The learning coach in the home, using primarily a text-based curriculum, is providing a significant portion of the delivery of instruction without the use of technology.

These features do not satisfy the CSL's essential requirements. Simply put, under the CSL, technology and the online teacher must be integral to the delivery of instruction. In Commonwealth Connections' model, although the teacher may provide some assessments online and tracks the student's progress online, the Department finds that this does not meet the requirement of using "technology in order to provide a significant portion of its curriculum and to deliver a significant portion of instruction to its students through the Internet or other electronic means." 24 P.S. §17-1703-A.

Commonwealth Connections must be able to demonstrate to the Department that technology is an integral part of its provision of curriculum and an integral part of the delivery of instruction. Simply using the computer for assessments and tracking of assignments does not meet this requirement. A cyber charter school must be able to show that a significant portion of the curriculum and a significant portion of the instruction is delivered through technology. If Commonwealth Connections intends to meet this fundamental requirement, it must be able to more fully explain the certified teacher's role in the delivery of instruction, including how often the teacher and student must interact through technology and the purpose of the interaction. Moreover, such an explanation must demonstrate that the school is using "technology in order to provide a significant portion of its curriculum and to deliver a significant portion of instruction to its students through the Internet or other electronic means." 24 P.S. §17-1703-A.

**Section 1743-A(c) and (d)**

Section 1743-A(c) and (d) require a cyber charter applicant to provide certain enumerated information to school districts, and to the parent or guardian of a student upon request and prior

to the student's first day of school. 24 P.S. §17-1743-A(c),(d). The cyber charter application requires the applicant to describe how this information will be made available to school districts and parents. Although Commonwealth Connections referenced Section 1743-A(c) and (d) in the compliance checklist included in its application, the page and Appendix references do not describe how Commonwealth Connections will make the required information available to school districts and parents. (App., pp. 4-5).

Therefore, the Department finds that Commonwealth Connections' failure to describe how such information will be made available to school districts and parents does not meet the requirements set forth in the charter application with reference to Section 1743-A(c) and (d).

**Model for Other Public Schools**

Because Commonwealth Connections failed to meet requirements of the CSL, as set forth above, the Department finds that Commonwealth Connections would not serve as a model for other public schools. 24 P.S. §17-1745-A(f)(1)(v). Commonwealth Connections failed to provide sufficient information that, *inter alia*, it meets the definition of a cyber charter school, that it has a facility for its operation, that it has sustainable support for its school, and that it is organized as a public, non-profit corporation and is an independent public school.

Based on all of the above, the Pennsylvania Department of Education denies the grant of a charter, at this time, to Commonwealth Connections Academy Charter School. Pursuant to the CSL, Commonwealth Connections may revise and resubmit its application to the Department or it may appeal this decision to the Charter School Appeal Board.

Pennsylvania Department of Education

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Thomas R. Winters  
Acting Secretary