

On October 1, 2002, CC submitted an application to operate as a cyber charter school. The Department provided 30 days' notice of a public hearing that was held on December 16, 2002. At the hearing, CC presented the Department with information about its application. Four members of the public spoke in support of a charter being granted to CC. Department personnel who had reviewed the application also posed questions to CC's representative.

On January 17, 2003, the Department denied the grant of a charter to CC. The CSL allows an applicant who has been denied a charter the opportunity to revise and resubmit the application to the Department. The Department must grant or deny the revised application within sixty days of receipt. 24 P.S. §17-1745-A(g). On March 10, 2003, CC submitted its revised application to the Department. For the reasons set forth below, the Department denies the revised application.

Findings of Fact

1. On October 1, 2002, CC submitted to the Department an application to operate a cyber charter school.
2. After review of the application and a public hearing, the Department denied CC's application and set forth ten reasons for the denial. *Department's January 17, 2003 Opinion and Order.*
3. On March 10, 2003, CC submitted a revised application to the Department.
4. CC provided petitions of support signed by approximately 951 Pennsylvania residents, including some current or former teachers. *Appendix N.*
5. CC provided copies of two letters of intent regarding the leasing of properties in Harrisburg for the location of the cyber charter school's administrative offices. *Appendix K.*

6. CC provided policies regarding truancy, absences and the withdrawal of students. *Appendix C, pp. 26-28.*
7. CC deleted a provision in its application that had previously allowed the Department to appoint a member to CC's Board of Trustees.
8. CC changed a provision in its application that previously allowed Connections Academy ("CA"), the for-profit entity that will provide certain services to CC under a management agreement, to have a CA representative as a voting member of CC's Board of Trustees. *Appendix I, Section 14.12.*
9. CC provided a copy of its Articles of Incorporation. *Appendix G.*
10. CC described how it would make required information available to school districts and parents. *Revised Application, pp. 23-26, 34.*
11. CC provided more specific and detailed explanations of the use of technology for the provision of curriculum and the delivery of instruction. *Revised Application and Appendix C.*
12. CC provided a copy of a finalized Management Agreement between CC and CA. *Appendix I.*
13. Pursuant to the Management Agreement, it appears that teaching staff are to be employees of CA, rather than employees of CC. *Appendix I, Section 2.7.*
14. The Management Agreement provides that services to special needs students will comply with state and federal rules, regulations and policies to the extent they are not inconsistent with the format of the educational services to be provided under the Management Agreement. *Appendix I, Section 2.14.*

15. Pursuant to the Management Agreement, if a student wishes to attend CC and does not have a current Individualized Education Program (“IEP”), the student’s resident district must update the student’s IEP. *Appendix I, Section 2.14.*

16. The Management Agreement provides that CA may determine that an IEP requires services that cannot be implemented appropriately through CC. *Appendix I, Section 2.14.*

17. Admission requirements for an eligible student include meeting the requirements of Section 2.14 of the Management Agreement, which pertains to students with disabilities. *Appendix I, Section 4.1.*

18. Pursuant to CC’s Handbook, an appropriate administrator from a student’s sponsoring district must approve a decision by CC to suspend a student for more than five days. *Appendix C, Due Process, pg. 32.*

19. Pursuant to CC’s Handbook, if charges against a student could result in a suspension of an additional ten days or an expulsion, an appropriate administrator from the student’s sponsoring district must approve the decision and may authorize a formal expulsion hearing. *Appendix C, Due Process, p. 32.*

20. CC’s revised application provides that if CC should cease operation, any remaining surplus shall be remitted to the Department, and that any furniture and equipment purchased with Department funds shall be delivered to the Department. *Revised Application, p. 41.*

21. CC’s revised application provides that if CC’s Board of Trustees wishes to further reduce the financial risk and eliminate the need for the loan entirely, it will consider a plan for providing computers and related technology to those families who face financial hardship and do

not have access to other computers. Providing computers only to hardship cases may reduce costs by approximately \$100,000. *Appendix J, p. 22.*

Conclusions of Law

1. CC provided 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). *Appendix N.*

2. CC met the requirements of Section 1747-A(16) of the CSL by providing the Department with letters of intent regarding the leasing of facilities and offices for the cyber charter school, the ownership thereof and any lease arrangements. *Appendix K.*

3. CC met the requirements of Section 1747-A(14) of the CSL by providing policies regarding truancy, absences and withdrawal of students. *Appendix C, pp. 26-28.*

4. CC's deletion of the provision that the Department would appoint a member of CC's Board of Trustees satisfies the Department's previously stated conclusion that the Department did not have the authority to make such an appointment.

5. CC's revision of its application that allows a CA representative to have attendance rights at meetings of CC's Board of Trustees satisfies the Department's previously stated conclusion that a CA representative could not be a voting member of CC's Board of Trustees.

Appendix I, Section 14.12.

6. CC satisfied the requirement that it must provide a copy of its Articles of Incorporation in order for the Department to verify that CC is an independent non-profit corporation. *Appendix G.*

7. CC satisfied the requirement that it describe how it would make information available to school districts and parents as required by sections 1743-A(c) and (d) of the CSL.

Revised Application, pp. 23-26, 34.

8. CC's provision of more specific and detailed information about its use of technology satisfied the requirement that it use technology to provide a significant portion of its curriculum and to deliver a significant portion of instruction through the Internet and other

electronic means. *Revised Application and Appendix C.*

9. CC satisfied the requirement that it must provide the Department with a copy of the finalized Management Agreement with CA. *Appendix I.*

10. Pursuant to the Management Agreement, it appears that teaching staff will be employees of CA. That does not comport with applicable law, which provides that teachers must be employees of the charter school. *Appendix I, Section 2.7. See, Collegium Charter School v. West Chester Area School District, CAB No. 1999-9; West Chester Area School District v. Collegium Charter School, 760 A.2d 452 (Pa. Commw. 2000); School District of the City of York v. Lincoln-Edison Charter School, 798 A.2d 295 (Pa. Commw. 2002).*

11. CC must comply with state and federal laws, rules, regulations and policies regarding the provision of services to students with disabilities. CC cannot disallow enrollment of a student, or require a student to disenroll, because CA believes it cannot provide the services required in a student's IEP. CC cannot require the school district of residence of a student who wishes to enroll in CC to update the student's IEP before the student may enroll in CC. 24 P.S. §17-1723-A; 17-1747-A(13); 17-1749-A(b)(8); 22 Pa. Code §711.1 *et seq.*

12. If a student who is enrolled in CC is to be suspended or expelled from CC, the student's school district of residence is not required to approve the suspension or expulsion, and

is not required to authorize a formal expulsion hearing. 24 P.S. §§13-1318, 17-1749-A(a)(1),(b)(3); 22 Pa. Code §12.1 *et seq.*

13. In the event CC would cease its operations, any assets remaining after disposition of liabilities and obligations shall be given to the intermediate unit in which CC is located for distribution to the school districts in which the students enrolled in CC reside at the time of dissolution. 24 P.S. §17-1741-A(a)(3)(i).

14. CC must provide the following to each student enrolled in CC: (1) all instructional materials; (2) all equipment, including, but not limited to, a computer, computer monitor and printer; and, (3) all technology and services necessary for the online delivery of the curriculum and instruction. 24 P.S. §17-1743-A(e).

Discussion

As noted above, CC's revised application corrected the deficiencies identified in the Department's January 17, 2003 Opinion and Order. However, the Department has also found deficiencies in the revised application. These deficiencies are reviewed below.

(1) Management Agreement

As required, pursuant to a decision of the Commonwealth Court, CC provided a copy of its finalized Management Agreement with CA. *Exhibit I. See, School District of the City of York v. Lincoln-Edison Charter School*, 772 A.2d 1045, 1050 (Pa. Commw. 2001). However, within the Management Agreement, the Department found several deficiencies.

(a) *Employees*

In the Management Agreement, it appears that CC staff will be employees of CA, rather than employees of CC. The Management Agreement states that “[i]n the event that applicable law or regulations require that Teachers be employed and/or benefits provided by the Charter

School, then the Charter School shall employ the Teachers and CA shall provide payroll management and other payroll and benefit administrative services” *Appendix I, Section 2.7*. In addition, if the teachers are paid and receive benefits from CC, an adjustment must be made in the amounts otherwise payable to CA. *Appendix I, Sections 2.7 and 7.1*. The application fact sheet also notes that the charter applicant does not have an existing retirement system. *Revised Application, p. 6*.

In determining whether for-profit entities could be involved in the establishment and operation of a charter school, the State Charter School Appeal Board (“CAB”) held that for-profit entities may be involved in the establishment and operation of a charter school “so long as the school itself is not-for-profit, the charter school’s trustees have real and substantial authority and responsibility for the educational decisions, and the teachers are employees of the charter school itself.” *Collegium Charter School v. West Chester Area School District, CAB No. 1999-9, p. 24* (emphasis added). The *Collegium* case was appealed to Commonwealth Court and the Court cited the above-quoted language in CAB’s holding and affirmed CAB’s conclusion. *West Chester Area School District v. Collegium Charter School, 760 A.2d 452, 468* (Pa. Commw. 2000); *also see, School District of the City of York v. Lincoln-Edison Charter School, 798 A.2d 295* (Pa. Commw. 2002). Therefore, it is clear that CC’s teachers must be employees of CC and not employees of CA. The Management Agreement must be changed to satisfy this requirement.

In addition, the CSL requires that “[a]ll employees of a charter school shall be enrolled in the Public School Employee’s Retirement System . . . unless at the time of the application for the charter school . . . the board of trustees of the charter school has a retirement program which covers the employes or the employe is currently enrolled in another retirement program.” 24 P.S. §17-1724-A(c). On the application fact sheet, CC acknowledged that it did not have an

existing retirement program. Since teachers must be CC's employees, CC must understand and acknowledge that its employees shall be enrolled in the Public School Employee's Retirement System.

(b) *Students with Disabilities*

Pursuant to the Management Agreement, CA is responsible for ensuring the provision of necessary special education programs and services. *Appendix I, Section 2.14, p 8.* The Management Agreement provides that such services are to be provided in a manner that complies with state and federal rules, regulations and policies to the extent they are not inconsistent with the format of the education services provided under the Management Agreement. *Appendix I, Section 2.14, p. 9* (emphasis added). In addition, the Management Agreement provides that special education students must submit a complete, current IEP, and if the IEP is not current it is the responsibility of the student's school district of residence to bring the IEP up-to-date. *Appendix I, Section 2.14, p. 9.* Furthermore, CA may determine that an IEP requires services that cannot be implemented appropriately through CC. *Appendix, Section 2.14, p. 9.* Finally, admission requirements allow a child to be eligible to become a student of CC subject to, *inter alia*, the requirements of section 2.14, which pertain to students with disabilities. *Appendix I, Section 4.1, p. 10.*

The CSL provides that “[a] charter school shall not discriminate in its admission policies or practices on the basis of intellectual ability, or . . . status as a person with a disability” 24 P.S. §17-1723-A(b)(1). Section 1749-A makes this provision of the CSL applicable to cyber charter schools. Section 1749-A also makes Chapter 711 of the Pennsylvania Code, which pertains to charter school services and programs for children with disabilities, applicable to cyber charter schools. 24 P.S. §17-1749-A(b)(8). In addition, an application to establish a cyber

charter school shall include “the provision of education and related services to students with disabilities, including evaluation and the development and revision of individualized education programs.” 24 P.S. §17-1747-A(13).

It is clear from these provisions of the CSL that a cyber charter school cannot deny admission to students with disabilities or incorporate policies that discriminate against students with disabilities. The language in Sections 2.14 and 4.1 of the Management Agreement, which pertain to students with disabilities, causes the Department concern that CC may not fully understand its responsibilities to students with disabilities. CC is responsible for implementing all state and federal laws and regulations regarding students with disabilities. In addition, the CSL requires the intermediate unit or school district in which a student enrolled in a cyber charter school resides to provide assistance, upon request, to the cyber charter school in the delivery of services to students with disabilities. 24 P.S. §17-1744-A(3).

The provisions of the CSL make it clear that a cyber charter school must provide services to students with disabilities. CC cannot deny admission to a student with disabilities because the student does not have a current IEP. CC cannot require a student’s school district of residence to update a student’s IEP before the student may enroll in CC. CA may not determine that it cannot provide the services required in a student’s IEP. If a cyber charter school cannot itself provide the required services, it can seek assistance from the relevant intermediate unit or school district of residence. There are no provisions in the CSL that allow a cyber charter school to deny admission to a student with disabilities, or determine that it cannot implement a student’s IEP. Therefore, the language in the Management Agreement that indicates potentially discriminatory admission requirements or other discriminatory policies, as described above, must be changed.

(2) Discipline – Due Process

CC's Handbook includes information about discipline and due process. The Handbook provides that if charges are brought against a student that may result in suspension of more than five days, the appropriate administrator of the sponsoring school district must approve the decision. *Appendix C, p. 32*. In addition, the Handbook provides that if charges are brought against a student that may result in an additional ten days of suspension or expulsion, the decision must be approved by the appropriate administrator of the sponsoring school district and the administrator may authorize a formal expulsion hearing. *Appendix C, p. 32*.

A cyber charter school is responsible for the discipline of its students. When a student is enrolled in a cyber charter school, the student's resident district is not required or authorized to decide disciplinary action against the student for violation of the cyber charter school's rules. A cyber charter school must provide whatever due process is necessary when disciplining its students. 24 P.S. §§13-1318, 17-1749-A(a)(1),(b)(3); 22 Pa. Code §12.1 *et seq.* Therefore, CC must change the language in its Handbook pertaining to due process procedures.

(3) Ceasing of Operations

CC provides in its revised application that if it ceases operation, it will remit any surplus to the Department. *Revised Application, p. 41*. CC also states that if it ceases operation it will deliver to the Department any furniture and equipment purchased with Department funds. *Revised Application, 41*. Under the CSL, if a cyber charter school's charter is revoked or not renewed, the cyber charter school shall be dissolved. 24 P.S. §17-1741-A(a)(3)(i). After disposition of liabilities and obligations, any remaining assets shall be given to the intermediate unit in which the cyber charter school's administrative office is located for distribution to school

districts in which the students enrolled resided at the time of dissolution. 24 P.S. §17-1741-A(a)(3)(i).

In the event CC ceases its operations, it must comply with this provision of the CSL and provide any remaining assets to the appropriate intermediate unit for distribution. Therefore, CC must change the language in its revised application that pertains to disposition of assets to comply with the CSL.

(4) Provision of Equipment

In the submitted budget information, CC stated that if its Board of Trustees wanted to further reduce the financial risk and eliminate the need for a loan entirely, it would consider a plan to provide computers and related technology to families who face financial hardship and do not have access to other computers. *Appendix J, p. 22.* CC further stated that if computers were provided only to hardship cases, CC could reduce costs by approximately \$100,000. *Appendix J, p. 22.*

The CSL provides that a cyber charter school shall provide to each student enrolled all equipment, including but not limited to, a computer, computer monitor and printer. 24 P.S. §17-1743-A(e)(2) (emphasis added). For each student enrolled, a cyber charter school must also provide or reimburse for all technology and services necessary for the online delivery of the curriculum and instruction. 24 P.S. §17-1743-A(e)(3) (emphasis added). Therefore, CC may not provide computers and related technology to only families who face financial hardship. Such language must be removed from the revised application and the Board of Trustees may not consider this as an option to reduce costs.

Conclusion

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. However, if CC submits corrections of the deficiencies to the Department, the Department will, in an attempt to bring this matter to expedited conclusion, grant CC a charter within five business days of the submitted corrections. CC only needs to correct the above-noted deficiencies and does not need to resubmit an entirely new application.

Pennsylvania Department of Education

Vicki L. Phillips
Secretary

Date: _____