

DEPARTMENT OF EDUCATION

In Re: The Proposed Liberty Cyber Charter :
School : **2007**
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, 2007, the proposed Liberty Cyber Charter School (“Liberty”) 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 6, 2007.
- At the hearing, Liberty presented the Department with information about its application. Department personnel who had reviewed the application also posed questions to Liberty’s representatives.

Conclusions of Law

On October 1, 2007, the proposed Liberty Cyber Charter School submitted to the Department an application to operate a cyber charter school. The Department is to evaluate the application based on the following criteria:

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

Conclusions

- **Liberty failed to provide detailed information on the proposed management structure of the organization.**
- **Liberty failed to provide supporting details or other creditable information on how it arrived at its enrollment projections used to determine budgeted revenue.**
- **Significant concern was noted over the potential conflict of interest involving one of Liberty's identified founders and board member's relationship with a company projected to have a major contractual relationship with Liberty.**
- **Liberty's proposed 5 year budget contained discrepancies and questionable assumptions that prevented assessing the viability of the overall financial plan.**
- **Liberty failed to provide sufficient information about the ownership of the facilities and leasing arrangements. 24 P.S §17-1747-A(16).**
- **There are numerous concerns with the uses of technology and technology policy as described in Liberty's application.**
- **Liberty's application failed to substantively detail how it will meet its obligation to provide special education programs and services to students with disabilities and failed to address key areas of special education policy and procedure. 24 P.S. §17-1747-A(13).**
- **There are numerous deficiencies with the Liberty curriculum, including: no stated measurable or non-measurable goals in the application; no research that is supportive of the educational program; state standards are not aligned to the curriculum; no curriculum presented for non-English speaking students.**

- **Liberty failed to provide a copy of its Articles of Incorporation evidencing that it is an independent entity eligible to be granted a charter and failed to provide Bylaws.**
- **Liberty failed to provide a copy of a management agreement.**
- **Liberty failed to demonstrate sustainable support for its cyber charter school plan by teachers, parents or guardians and students.**
- **Liberty failed to provide sufficient information to identify a school calendar, including the length of the school day, and how Liberty will define and monitor a student’s school day.**
- **There is conflicting and confusing information in the application.**
- **Liberty failed to respond to specific requests for information in the application.**
- **The company that will provide the portal technology for Liberty is owned by a founder and Board member of Liberty.**
- **There is no mention of requirements for meeting No Child Left Behind’s targets for making Adequate Yearly Progress**

Discussion

Summary of the Proposed Liberty Cyber Charter School

- Liberty Cyber Charter School proposes to enroll students in grades K-12
- The administrative headquarters for the proposed cyber charter school will be in Exton, Chester County, Pennsylvania
- The maximum projected student enrollment for year one is 500 students, increasing to 4000 students by year five
- Liberty Cyber Charter School intends to enroll students from all 501 Pennsylvania School Districts
- Liberty cyber charter school intends to promote the purposeful study of collegiate and vocational career options through the facilitation of authentic, real life experiences

Finance and Budget

Liberty states in its application that the board of trustees will govern all operations of the school, delegating the day-to-day management responsibilities to administrative staff. There are no job descriptions, organization charts or other information describing the management structure of the administrative staff. Proposed staffing levels identify various position titles, but

there is no information on the related job responsibilities, command structure, and interaction with the board of trustees.

Liberty projects enrollment of 500 students in the first year, 1200 in the second year, 2400 in the third year, 3000 in the fourth year and 4000 in the fifth year of operation. The estimated enrollment numbers are a critical component of Liberty's financial plan and evaluating their reasonableness is instrumental to assessing fiscal viability. The application contains no information to support the enrollment projections presented in the financial plan. Achieving enrollment amounts less than projected could result in significant deficits affecting the financial viability of the school. Based on the per student variable costs identified in the assumptions, a minimal shortfall of student enrollments would result in an operating deficit. The application did not address the recruiting and marketing plan to be utilized for achieving the stated ambitious enrollment projections.

During the hearing it was established that Digital Schooling would provide web portal services for the school and students. Mr. David Johns is President of Digital Schooling and is also listed as one of Liberty's founders and is identified as one of the board members in the application. This relationship presents a serious potential for conflict of interest. Although specific questions were not asked about this issue at the hearing, Liberty did not provide any explanation at the hearing about this apparent conflict of interest. Comments were made off-the-record about this issue but the Department cannot rely on off-the-record comments to determine whether Liberty understands the apparent conflict of interest and whether Liberty will take any action to resolve it.

The proforma financial assumptions budget \$360 per student for a laptop/printer/monitor in the initial year of operation. The budgeted cost per student rises to \$431 in the second year (19.7%), \$504 in the third year (16.9%), \$579 in the fourth year (14.9%) and \$596 in the fifth year (2.9%). There is no documentation supporting how Liberty arrived at the per student computer costs or to explain the substantial increases in costs through the fourth year. The amount budgeted in each year is the same for each student, regardless if they are existing or new students. There is no information to indicate if this is an annual lease cost per student or if students are to receive new computers each year. Other related concerns not addressed in the application include: the vendors or method used in arriving at the budgeted costs; the expected process of acquiring the computer equipment (lease, purchase, terms); the process of getting the computer equipment to the students; and the process of addressing a student's computer that breaks or becomes unusable since there are no extras or replacement units budgeted.

The budget assumptions include estimated costs of \$300 per student and per employee for the web portal with increases of 3% in each of the succeeding years. The application contained no information supporting the basis for the projected cost. It was established during the hearing that the web portal services were to be provided by Digital Schooling; however, no proposed contract or agreement was provided supporting the budgeted costs or the exact services that would be provided.

No information or documentation was provided supporting contracted "BackOffice/Accounting/Payroll" costs included in the budget. Thus, no assessment could be made about the adequacy, reasonableness or necessity of the budgeted amounts.

The application asks for a description of the proposed cyber charter school's insurance coverage plans, including health, general liability, etc. Liberty did not respond to this question or provide any evidence of insurability. Insurance costs were included in the budgets without any documentation supporting the amounts shown.

The CSL requires that an applicant identify 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(11). The application also asks for information about the facility and plans for maintaining the facility. Liberty did not provide any information about a facility and did not provide information on identifying and acquiring space for the school facility. The assumptions contained in the proforma financial information provide estimated costs per square foot and estimated square foot requirements only.

Technology

Technology standards proposed in Liberty's application reference prior ISTE NETS Student standards. It is unclear how the school will incorporate updated NETS Student standards released by ISTE in June 2007.

A major concern is that Liberty is planning to educate students how to use Microsoft Office but is not educating students how to use the tools of writing or computation. Thus, it appears Liberty will teach students how to use a specific product but not the concept of work processing or presentation tools.

There is no clear indication on what curriculum is included in Learning Computers and Advance Computer Technology courses.

How was the portal technology (Digital Schooling) for student information identified? What criteria were used to review this and other technologies? Although Liberty was familiar

with the software that was used by other cyber schools, there is no clear indication what criteria were used to make the determination to use this portal technology.

There is no information about whether technical support is also provided to parents as it is to students.

There is no information about the technical specifications of the technology provided to students (computer, printer, software). Liberty is still reviewing hardware specifications and could use thin client. There is no information about the procurement process to secure these items. Liberty is looking to lease computers but did not answer how the procurement process would be developed.

There is no indication that Liberty intends to apply for the Erate program to discount telecommunications costs including phone and Internet. There is no indication that a technology plan will be submitted upon approval of a charter and this will be needed if applying for Erate.

There is no indication of what is included in the Software costs identified in the budget. Microsoft Office licenses are indicated but the license costs identified in the budget are too high.

There is concern that technology costs per student for a laptop/printer/monitor are low especially without identifying the true specifications needed for each system. Liberty states that it is leasing systems each year but since the specifications are not known, it is curious how costs for leasing could be included in the budget.

There are separate line items in the budget for Computers and for Laptop/printer/monitor line. It is assumed, but not clear, that the computer costs are for purchased computers for staff use and the Laptop costs are yearly costs for leased computers for student use.

Special Education

Liberty's application and testimony basically restates special education law but does not significantly detail "how" Liberty will execute the various provisions of the law in the cyber school environment. The policy section is underdeveloped. It does contain a detailed policy on Confidentiality of Student Records; however, other significant policies or adequate procedures either via the application or as expressed during the hearing were not sufficiently addressed. Liberty failed to provide adequate detail on what/who/how it plans to contract with service providers to address the needs of students. Liberty did not adequately address the child find process in the cyber environment or provide significant detail of how it would provide parent and teacher training as required by IDEIA.

Curriculum

There are no stated measurable goals. There are only frameworks around which the goals are designed and actual goals are not stated. Liberty states in its application that "*Liberty Cyber Charter School's design for measurable academic goals and objectives is the use of the template "Getting Results" Pennsylvania Department of Education's Framework for Continuous School Improvement Planning...Liberty Cyber Charter School's non-academic goals and objectives are designed through the lens of the principles of the mission statement and expressed in Community Service and Entrepreneurship.*"

There is no research basis for the educational program. The curriculum will be developed on an individual basis by teachers using the mission of the school and the Pennsylvania standards as guides. There seems to be no system in place to unify the content taught and ensure adherence to the state standards and assessment anchors; Liberty's assurance that teachers will be sharing materials via the web portal is insufficient.

Although it is stated in the application that “*Curriculum and instruction is aligned to Pennsylvania academic standards, benchmarks and assessments,*” there is little evidence of this in the application. In its application, Liberty lists and describes the courses available to students, but there is little evidence of the content taught at each grade level and how it aligns to the standards. The arts and humanities section is an example of how the entire curriculum should be arranged.

Chapter 4.21 of state regulations requires that all students at the elementary level receive instruction in theatre and the use of the library and other information sources. Chapter 4.22 and 4.23 require that all students in middle and high school receive instruction in theatre. These subjects are missing from the curriculum at these levels.

“Other local assessments” need to be defined and specifically described, as they are required for each subject that has academic standards but is not assessed by the PSSA. When asked this question during the hearing, Liberty’s representatives incorrectly indicated that student grades in each subject were sufficient local assessments.

Evidence of a curriculum to allow non-English proficient students to become proficient is missing. Progressing through the academic content of the cyber program is insufficient to allow students to become proficient in the English language. Liberty has failed to follow state and federal regulations for ESL programs. State regulations require schools to provide certain components of ESL instruction: a home language survey; assessment and identification of students; selection of a core ESL curriculum and supplemental materials; tracking of student proficiency levels; and procedures for exiting students from the program. The home language survey was briefly mentioned in the testimony, but none of these are present in Liberty’s application.

Legal

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 Liberty is a public, nonprofit corporation and an independent public school, a copy of its Articles of Incorporation must be submitted with the application. Not only does the application ask the applicant to provide a copy of the cyber charter school's Articles of Incorporation, 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 Liberty is an independent nonprofit corporation and that it is not the subsidiary of another entity. Liberty failed to provide a copy of its Articles of Incorporation.

In addition, the application asks the applicant to provide a copy of the cyber charter school's Bylaws. Liberty failed to provide a copy of its Bylaws.

In Liberty's school start-up timeline, it states that in April 2008 its objective is to "execute management agreement with consultants" and in May 2008 to "approve management agreement." It is not clear what management agreement is to be executed and approved.

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 and implicit in Section 1716-A(a) is 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, if Liberty intends to enter into a management agreement, the Department must be provided with a copy of a finalized agreement so that the Department can determine whether it comports with the CSL.

“[S]ustainable support means support sufficient to sustain and maintain the proposed charter school as an on-going entity.” *In Re: Ronald H. Brown Charter School*, CAB No. 1999-1, p. 18. Liberty did not provide any evidence of support for its cyber charter school plan by teachers, parents or guardians and students.

Section 1719-A of the Charter School Law requires that an applicant provide the proposed school calendar, including the length of the school day and school year consistent with Section 1502 of the Public School Code. Section 1747-A requires that an applicant provide a description of how the cyber charter school will define and monitor a student’s school day.

Liberty provides a general school calendar that simply lists months of the year when various events will occur. Although it is stated in the application that instructors will be in school and instructing students during office hours Monday-Friday from 8:30-4:30, Liberty did not provide an actual calendar of days that the school will be open. It is also stated in the

application that the school day is flexible with students being able to access their coursework twenty-four hours per day, seven days a week including weekends and holidays. Although students have the ability to access work during these times, the school must operate in compliance with section 1502 of the Public School Code, which identifies days schools cannot be open for ordinary instruction. Thus, Liberty must explain whether students will be credited with attending school on a day when Section 1502 does not allow instruction or when teachers and administrators are not available.

On the Application Fact Sheet, Liberty states that the age of kindergarten is five and the age of beginners is five. However, in the text of the application, Liberty states that the entry age for beginners is five years and seven months before September 1. Because of this conflicting information the Department cannot determine whether Liberty's age of admission for beginners and kindergarten students is in compliance with the Public School Code and implementing regulations.

On page 58 of the Application, Liberty states that it will ensure that it is not "the first local education agency to provide a child with special education services without parental consent." The Department does not understand the meaning of this confusing statement.

The application asks for identification of the group that is working together to apply for a charter, including the names of the founders, their background and experiences and references for each. In the application there is some information about three of the founders but information is lacking for the other two identified founders. The application also asks for information about how the group came together and the manner in which community groups are involved in the charter school planning process. Liberty did not provide the information requested.

The application asks the applicant to demonstrate how it will publicize the cyber charter school to attract a sufficient pool of eligible applicants and the type of outreach that will be made to potential students and families. Liberty did not provide any information responding to this request.

Having conflicting and confusing information in the application and failing to respond to specific requests for information or documents, in addition to other weaknesses in the application, evidences that Liberty is not adequately prepared, in terms of support and planning, to provide comprehensive learning experiences to students.

Accountability

There is no mention in the application of performance on, or participation in, the PSSA, the graduation requirement, or the attendance requirement. Liberty demonstrated no knowledge of measuring achievement.

Therefore, for the reasons stated above, the cyber charter school application for the Liberty Cyber Charter School is denied.

Diane Castelbuono
Deputy Secretary
Office of Elementary & Secondary Education

Date